

BAIL BILL, 2024

A Bill

For

An Act to make provision for consolidation and harmonization of existing pre-trial release laws and practices; enhancement, management and maintenance of pre-trial release and for related matters.

Enacted by the Parliament of Lesotho

PART I

Preliminary

Short title and commencement

1. This Act shall be cited as the Bail Act, 2024 and shall come into operation on the date of publication in the Gazette.

Interpretation

2. In this Act, unless the context otherwise requires-

“accommodation requirement” means a requirement imposed by an order of court for suitable arrangements for the accommodation of an accused person for security purposes before the person is released on bail;

“accused person” includes a person-

- (a) who has been charged with or convicted of an offence;
- (b) whose conviction for an offence is stayed; and
- (c) in respect of whom-

(i) proceedings on an appeal against conviction or sentence for the offence are pending; and

(ii) a new trial has been ordered to be held for an offence;

“apprehended violence order” means a warrant of apprehension or order for arrest by court for offences carried out within a domestic and personal violence;

“bail” means a temporary release of an accused person from custody while awaiting trial for an alleged offence;

“bail application” means a release, detention or variation application;

“bail bond” means a written notice that requires an accused person to -

(a) appear before a court on such day and at such time and place as are from time to time specified in a notice given or sent to the accused person as may be prescribed by the regulations; and

(b) notify a court before which an accused person is required to appear of any change in the residential address of the accused person;

“bail condition” means a condition of bail imposed by a court;

“bail deposit” means money paid to court by an accused person in lieu of his release pending finalisation of his case;

“bail guarantor” means a person who enters into a bail security agreement other than the accused person;

“bail security” means property or money pledged with the court in compliance of bail condition for release of an accused person from custody;

“character profile” means an acknowledgment, given by an acceptable person, other than the accused person, to the effect that the person is

acquainted with the accused person and regards the accused person as a responsible person who is likely to comply with the bail condition;

“child” means a person under the age of eighteen years;

“conditional release” means a decision to grant bail with the imposition of bail conditions;

“conviction” means a formal declaration by the decision of a judge in a court that an accused person is guilty of an offence;

“court” means a court which has jurisdiction over bail matters;

“correctional centre” means a place for reception, detention, confinement, training or treatment of an accused or convicted person;

“detention application” means an application by **prosecutor that an accused person be admitted into custody**;

“enforcement condition” means a condition that requires an accused person to comply, while at liberty on bail, with one or more specified kinds of police directives given for the purpose of monitoring or enforcing compliance with the underlying bail condition;

“high risk” means a high possibility that an accused person, if released from custody, may-

- (a) fail to appear at any proceedings for the offence;
- (b) commit a serious offence;
- (c) endanger the safety of victims, individuals or the community; or
- (d) interfere with witnesses or evidence;

“intoxicated person” includes a person who has consumed alcohol, drug or a combination of drugs beyond a legal limit;

“juvenile” means a child below the age of 18 years who is in conflict with the law;

“proceedings for an offence” means criminal proceedings against a person for an offence, whether summary or indictable, and includes the proceedings-

- (a) for committal;
- (b) relating to bail;
- (c) relating to sentence; or
- (d) on an appeal against conviction or sentence;

“police officer” means an arresting officer or an officer or sub-officer in charge of a police station or lock-up;

“prescribed record” means a record of a decision of the court or police officer made in relation to this Act;

“release condition” means a condition imposed on an accused person by police upon release on warning;

“security requirement” means a monetary acknowledgement furnished by an accused person or any other person as a condition for release;

“serious offence” means an offence-

- (a) of murder or any other offence punishable by imprisonment for life, or
- (b) described as such under the Penal Code Act, 2012¹;

“surrender to custody” means an order for an accused person who is released on bail to surrender himself into the custody of a court or the police at the time and place appointed for him to do so;

“variation application” means an application made before court to alter a bail condition; and

“victim” means-

- (1) a person-

- (a) against whom an offence is committed by another person;
or
 - (b) who, through or by means of, an offence committed by another person, suffers physical injury, or loss of, or damage to, property;
- (2) a parent or legal guardian of a child, or of a young person, who falls within subparagraph (1)(a) or (b), unless that parent or guardian is charged with the commission of, or convicted or found guilty of, or pleads guilty to, the offence concerned; and
- (3) a member of the immediate family of a person who, as a result of an offence committed by another person, dies or is incapable, unless that member is charged with the commission of, or convicted or found guilty of, or pleads guilty to, the offence concerned.

PART II

General Bail

Right to Bail

- 3.
 - (1) An accused person-
 - (a) has a right to apply for bail before a court; or
 - (b) may be released on his own recognisance.
 - (2) A bail shall be granted to an accused person in relation to an offence specified in Schedule I, only if the accused person has satisfied the court that bail should be granted.
 - (3) An accused person may make a bail application before a court, if-
 - (a) the police refused to release him;

- (b) he has made a first appearance before the court; or
- (c) the bail decision is to be varied by the court.

Decision to release without bail

4. A decision to release a person with warning and without bail shall be made only by a police officer above the rank of sergeant for an offence under Schedule III subject to a condition to-

- (a) report himself periodically at the police station;
- (b) surrender to custody when requested;
- (c) avoid interfering with investigations or crown witnesses; or
- (d) avoid obstructing the course of justice.

Grounds for refusal of bail

5. (1) A bail may be denied for an offence punishable with imprisonment, if-
- (a) a court is satisfied that there are substantial grounds for believing that an accused person, if granted bail would-
 - (i) fail to attend remands;
 - (ii) commit an offence while on bail; or
 - (iii) interfere with a witness or otherwise obstruct the course of justice, whether in relation to himself or any other person;
 - (b) an accused person is charged with an offence alleged to have been committed while he was released on bail;
 - (c) the court requires a case of an accused person to be adjourned for an inquiry and it appears to the court that it would be impracticable to complete the inquiry without keeping an accused person in custody; or

- (d) there are other grounds that may be provided for by any other law or court.

(2) In deciding whether any of the circumstances specified under subsection (1)(a) exists in relation to an accused person, a court shall consider-

- (a) the nature and seriousness of the offence;
- (b) a character of an accused person, history, association and community ties;
- (c) a record of an accused person regarding the fulfilment of his obligations under previous grants of bail;
- (d) the evidence against the accused person who has committed the offence while on bail or has failed to surrender to custody;
- (e) whether an accused person has been convicted on previous occasions for offences which are punishable with imprisonment;
- (f) the interest of the society and victim; or
- (g) any other factor which appears to be relevant, including the health profile of an accused person.

(3) A court may deny bail to an accused person who is charged with or convicted of an offence punishable with imprisonment, where-

- (a) it is satisfied that the accused person should be kept in custody for his own protection;
- (b) it appears to the court that the accused person has failed to surrender to custody in accordance with his bail conditions, and there are reasonable grounds for believing that, if released on bail, the accused person will fail to surrender to custody; or
- (c) there exist no exceptional circumstances that warrant the accused person to be released on bail.

Duration of bail

6. (1) A bail ceases to have effect, if-
- (a) it is revoked;
 - (b) the bail proceedings for the offence are concluded;
 - (c) no further substantive proceedings for the offence are pending before a court; or
 - (d) a trial has reached the end.

Requirement to appear in court for bail

7. (1) A person who is granted bail or in respect of whom bail is dispensed with, is required to appear in person before a court and surrender to the custody of the court, as and when required to do so in proceedings for the offence for which the bail decision is made.

(2) A requirement to appear before a court is made-

- (a) where bail is granted with bail condition for an accused person;
or
- (b) if bail is dispensed with, when required by the court or any notice or other process by which a person may be required to appear before court.

(3) The time at which a person is required to appear is the time at which the matter relating to the offence is called at court premises whether or not the matter is dealt with at that time.

(4) A court before which a person is required to appear, may pardon him after hearing his reasons for failure to appear.

Limitation on entitlement to be at liberty

8. A bail does not entitle a person to be at liberty-
- (a) until the accused person signs, and gives to court, a copy of the bail bond for the decision to grant bail;
 - (b) until all bail conditions have been complied with;
 - (c) on occasions where he is required to appear before a court under his bail bond; and
 - (d) while he is in custody for another offence.

Requirement to consider high risk

9. (1) A court shall, before making a bail decision, consider whether there is a high risk.
- (2) A court in deciding whether there is a high risk, shall consider-
- (a) the background of an accused person including his criminal history and community ties;
 - (b) the circumstances of the offence;
 - (c) nature and seriousness of the offence;
 - (d) history of violence;
 - (e) whether an accused person has previously committed serious offence while on bail;
 - (f) a pattern of non-compliance with bail conditions;
 - (g) whether an accused person has violated bail conditions or parole orders;
 - (h) the time likely to be spend in custody if bail is denied;
 - (i) the likelihood of a custodial sentence being imposed, if accused person is convicted;

- (j) for application for bail pending appeal, whether the appeal has a reasonable arguable prospect of success;
- (k) any special vulnerability or needs the accused person has including being a youth, having cognitive or mental impairment;
- (l) the need for the accused person to be free to prepare for appearance in court or to obtain legal advice; and
- (m) the need for the accused person to be free for any other lawful reason.

(3) A court shall, in deciding whether an offence is a serious offence, or the seriousness of the offence, consider-

- (a) whether an offence-
 - (i) is of a sexual or violent nature;
 - (ii) involves the possession; or
 - (iii) involves the use of a dangerous weapon or instrument;
- (b) the likely effect of the offence on any victim and on the community; and
- (c) the number of offences likely to be committed or for which the person has been granted bail or released on parole,

but shall not limit the matters that may be considered:

Bail decisions possible when there are no high risks

10. A court may make the following bail decisions where there is no high risk:

- (a) to release an accused person on own recognisance; or
- (b) to grant bail with the imposition of bail conditions.

Conditions of recognizance

11. (1) The recognizance taken on the admission of an accused person to bail shall be taken by a court or judicial officer, either from the accused person or from one or more sureties in the discretion of the court or judicial officer according to the nature and circumstances of the case.

(2) The conditions for recognizance are that an accused person shall-

- (a) appear and undergo any further examination with the magistrate or the Director of Public Prosecutions;
- (b) answer an indictment that is presented, or a charge made against him in a competent court for an offence he is charged with at any time within twelve months from the date of recognizance;
- (c) attend a hearing of the case and receive sentence; and
- (d) accept service of summons or warning to undergo further examination and such indictment, charge, notice of trial or other notices at any place in Lesotho chosen by him.

(3) The recognizance shall continue in force, notwithstanding that for any reason, when the trial takes place, no verdict is given, unless the indictment or charge is withdrawn.

Power of court to detain accused on a charge of murder, sexual offence and robbery

12. (1) Notwithstanding any provision of this Act, the court may deny an accused person bail where he is charged with-

- (a) murder under the following circumstances:
 - (i) the killing was planned or premeditated;

- (ii) a victim was a law enforcement officer performing his functions as such, whether on duty or not, at a time he was killed;
 - (iii) a victim is killed by virtue of holding a law enforcement office;
 - (iv) a victim is a person who has given or was likely to give material evidence with reference to any offence referred to in Part II of Schedule 1;
 - (v) the death of the victim was caused by the accused in committing or attempting to commit or after having committed or attempted to commit sexual offence, robbery, stock theft, theft of a motor vehicle, and indecent assault on a person under the age of 16 years; or
 - (vi) the crime was committed by a person, group of persons or syndicated killing in the purported execution or furtherance of a common purpose or conspiracy;
- (c) sexual offence where the victim-
- (i) was sexually abused-
 - (aa) more than once whether by the accused or by any accomplice;
 - (bb) by more than one person and the person killed in the execution or furtherance of a common purpose or conspiracy;
 - (cc) by a person who is charged with having committed two or more offences of sexual offence; or

- (dd) by a person, knowing that he has acquired immune deficiency syndrome or the human immune deficiency virus;
 - (ii) is a child under the apparent age of 18 years;
 - (iii) is a person with a disability who due to his nature and type of disability, is rendered particularly vulnerable; or
 - (iv) is a person with mental incapacity as contemplated in section 2 of the Mental Health Law of 1964²;
 - (c) sexual offence involving the infliction of grievous bodily harm;
 - (d) robbery, and the robbery involved-
 - (i) the use of a firearm by the accused person, any co-perpetrator or participant in the robbery; or
 - (ii) the infliction of grievous bodily harm by the accused person or any of the co-perpetrators or participants; or
 - (e) theft or attempted theft of a motor vehicle;
 - (f) indecent assault on a child under the apparent age of 18 years, and the assault involved the infliction of serious bodily harm;
 - (g) an offence referred to in Part II of Schedule 1-
 - (i) where the accused has previously been convicted of an offence referred to in the Schedule; or
 - (ii) where the offence was allegedly committed while the accused person was released on bail in respect of an offence referred to in the Schedule.
- (2) Where the court denies an accused person bail, the court shall order that the accused person be detained in custody until he is dealt with in accordance with the law unless the accused, having been given a

reasonable opportunity to do so, adduces evidence which satisfies the court that exceptional circumstances exist which in the interest of justice permit his release.

General limitation on the power of court to grant bail

13. A court shall not grant bail or dispense with bail for any of the following offences:

- (a) an offence for which an appeal is pending in-
 - (i) a court of criminal appeal against:
 - (aa) a conviction; or
 - (bb) a sentence imposed on conviction on indictment;
 - (ii) the High Court in relation to an appeal; or
- (b) circumstances indicated in the Schedule I and Schedule II of the Criminal Procedure & Evidence Act, 1981³,

unless it is established that special or exceptional circumstances exist that justify that bail decision.

PART III

Rights of a Victim in Bail Application

Rights of a victim to attend a bail application

14. (1) A victim has a right to-
- (a) attend and be informed of any proceedings-
 - (i) where an accused person is to be released on bail;
 - (ii) if bail has been granted to the accused person;
 - (iii) where a further condition of bail is to be imposed; or
 - (iv) where a condition of bail is to be amended or

supplemented; and

- (b) request a prosecutor in the proceedings to present information or evidence to the court that may be relevant to a question under consideration by the court in the proceedings.

(2) If an accused person is in custody, the investigating officer or prosecutor shall, as soon as possible, inform the victim of-

- (a) a place, date and time of the first appearance of the accused in court; and
- (b) his rights under subsection (1).

(3) If an accused person intends to apply to the court for bail on a date or at a time subsequent to the first appearance, the accused person or his legal representative shall request the investigating officer or prosecutor to inform the victim.

(4) The investigating officer or prosecutor shall, by way of oral evidence or affidavit, state-

- (a) whether the provisions of subsection (2) or (3) were duly complied with and, if they were not complied with, the reasons for not complying with any such provisions;
- (b) the manner in which the victim was informed; and
- (c) the date and time when the victim was informed,

(5) The evidence given shall form part of bail proceedings.

(6) If a victim is present at the proceedings at which bail is considered in respect of an accused person and the proceedings are postponed, the court shall inform the victim of the date on, and time at which such proceedings have been postponed and of the rights of the victim under subsection (1).

(7) If a victim is not present at the proceedings under subsection (6) and it

is in the interest of justice that the matter be dealt with immediately, the court shall enquire into the question whether the victim had knowledge of such proceedings, and if the court is-

- (a) satisfied that the victim has knowledge of the proceedings, the court shall direct that the matter be dealt with in the absence of the victim; or
- (b) not satisfied that the victim had knowledge of the proceedings, the court shall postpone the proceedings in order for the victim to be present.

(8) Where the victim referred to under subsection (7) is not present before court, the investigating officer in the proceedings shall inform the victim where -

- (a) bail was granted to the accused person, of the granting of the bail and conditions of bail imposed; or
- (b) the proceedings were postponed, of the date on and time at which the proceedings were postponed and the rights of the victim under subsection (1).

(9) If an accused person is released on bail, the court may add further conditions of bail to ensure that the accused person does not make contact with the victim.

Special duties of a prosecutor

15. In criminal proceedings where an accused person is charged with an offence under Schedules I and II, the prosecutor shall consult with the victim from the initial stages of bail proceedings to -

- (a) ensure that any information relevant to the offence is obtained from the victim, including information relevant to the question whether the

- accused person is to be released on bail;
- (b) orientate the victim with the court structure and procedures; and
 - (c) provide any information to the victim necessary to lessen the impact of the trial on the victim.

PART IV

Conditions for Bail

Bail conditions

16. (1) A person who is granted bail in criminal proceedings shall be subjected to bail conditions.

(2) A court may require a person to whom bail is granted to provide any of the following:

- (a) a surety to secure his surrender to custody; or
- (b) a payment of such amount as may be specified,

as a condition for bail before his release.

(3) A person to whom bail is granted may be required-

- (a) to surrender his travel documents to the court;
- (b) to inform the court, if he intends to leave Lesotho;
- (c) to report at specified times and dates to a police station;
- (d) to comply with such other requirements as it may appear to the court to be necessary to ensure that the person-
 - (i) surrenders to custody;
 - (ii) does not commit an offence while on bail;

- (iii) does not interfere with witnesses or otherwise obstruct the course of justice whether in relation to himself or any other person;
- (iv) attend remand at such time as the court may specify; or
- (v) provide security for his release.

(4) The requirements referred to in section 14(3)(d) may include the imposition of a curfew, in respect of a person to whom bail is granted, between the hours specified by the court requiring the person to remain within a specified locality during the hours so specified.

(5) Where a parent or guardian of a juvenile consents to be a surety for the juvenile, he may be required to ensure that the juvenile complies with any conditions imposed on him.

(6) A condition shall not be imposed on a parent or guardian of a juvenile where it appears that the juvenile will attain the age of eighteen years before the time to be appointed for him to surrender to custody.

(7) A court may, on application-

- (a) vary a condition of bail; or
- (b) impose a condition where bail was granted unconditionally.

(8) A bail condition shall be reasonable, proportionate to the offence for which bail is granted and appropriate to the high risk in relation to which they are imposed.

(9) A bail condition shall not be more onerous than necessary to mitigate the high risk in relation to which the condition is imposed.

Character profile

17. (1) A bail condition shall require one or more character profiles to be provided.

(2) A character profile is an acknowledgment, given by an acceptable person, other than the accused person, to the effect that the person is acquainted with the accused person and regards the accused person as a responsible person who is likely to comply with his bail conditions.

(3) A decision whether which person, class or description of persons, is an acceptable person for a character acknowledgement shall be made by the court hearing the bail application and imposing the bail condition.

(4) A court to determine bail, shall take all reasonable steps to ensure that the person is informed that providing false or misleading information in a character acknowledgement is a serious offence.

(5) A person who provides false or misleading information in a character acknowledgement commits an offence and, if convicted, shall be sentenced to imprisonment or to a fine prescribed under Schedule IV or both.

Bail deposit instead release on own recognizance

18. (1) When a person is required by any court to enter into release on his own recognizance with or without sureties, the court may, except in the case of a bond for good behaviour, instead of causing release on own recognisance to be entered into, permit him or some other person on his behalf to deposit such sum of money as the court may fix.

(2) The court or judicial officer shall make written conditions, in respect of the deposit money under subsection (1) of the same nature as the conditions prescribed in respect of recognisances and the provisions prescribing the

circumstances in which recognisances taken from the accused person alone may be forfeited, his arrest, if he is about to abscond and remission of forfeited bail shall *mutatis mutandis* apply in respect of any such deposit of money.

Accommodation requirements

19. (1) A bail condition imposed by a court on the grant of bail may require that suitable arrangements be made for accommodation of the accused person before he is released on bail.

(2) An accused person shall bear the onus to prove that a suitable arrangement under subsection (1) has been made where necessary.

(3) An accommodation requirement may be imposed -

(a) in any other circumstances which may be authorised by the law.

Surety

20. (1) A court may order provision of surety as a bail condition in order to release an accused person on bail.

(2) A surety who wishes to be released from his obligations under a recognisance-

(a) shall apply, in writing, for such release to the court by which such bail condition was taken; and

(b) may attend before that court for the hearing of such application.

(3) Where a surety is released, an accused person concerned-

(a) shall forthwith be noticed of such release; and

(b) may be taken into custody until he provides the other surety

(4) When a surety to a recognizance dies before any forfeiture has been incurred, his estate shall be discharged from liability in respect of the bail condition, but the accused may be required to find a new surety.

Rules of evidence

21. (1) A court shall, in considering bail, take into account any evidence or information that a court considers credible or trustworthy in the circumstances and is not bound by the principles or rules of law regarding the admission of such evidence.

(2) Subsection (1) does not apply to proceedings-

- (a) for an offence in relation to failure to comply with bail conditions; and
- (b) under forfeiture of security.

Bail bond

22. (1) A court shall ensure that a person is given a bail bond when it grants bail.

(2) An accused person granted bail shall comply with the requirements of a bail bond.

(3) A court shall-

- (a) warn an accused person granted bail that to commit an offence while on bail may result in a more severe penalty being imposed on conviction for the offence for which bail is granted;
- (b) set out the bail conditions;
- (c) explain the consequences that may follow, if an accused fails to comply with his bail conditions; and

- (d) include any information regarding the review or variation of a decision.

Notice of variation

23. A court designated to determine bail may vary a bail condition and shall ensure that the accused person is given a written notice setting out the terms of the varied bail condition.

Interested person may make variation application

24. (1) An interested person may apply to a court for a variation of bail conditions.

(2) An application under this section is a variation application.

(3) An interested person may be-

- (a) an accused person who is granted bail;
- (b) a prosecutor in proceedings for the offence;
- (c) a victim of crime;
- (d) a complainant in a domestic violence offence;
- (e) a person for whose protection an order is or may be made in the case of bail granted on an application for an order; or

(4) A court shall not hear a variation application made by a person other than an accused person, unless it is satisfied that the accused has been given reasonable notice of the application.

(5) A court shall not hear a variation application made by a person other than a prosecutor in the proceedings, unless it is satisfied that a prosecutor has been given a reasonable notice of the application.

(6) A court shall not vary a bail decision on the application of a person referred to in subsection (3) (c) or (d), unless the prosecutor in the proceedings has been given a reasonable opportunity to be heard on the application.

(7) A court shall not revoke bail on a variation application, unless revocation is requested by the prosecutor in the proceedings.

Powers of the High Court to vary subordinate court bail decisions

25. (1) The High Court may vary a bail decision of a subordinate court only, if the variation application relates to bail conditions that are reviewable by a court.

(2) The High Court shall not vary a bail condition under this section, unless it is satisfied that in the case of a variation application made by a person other than the-

- (a) accused person, the accused person has been notified of the application and no objection to the application has been made; and
- (b) prosecutor in the proceedings, the prosecutor has been notified of the application and no objection to the application has been made.

(3) The High Court shall not vary a bail condition under this section at any time-

- (a) before the determination of summary or committal proceedings against the accused person, if the bail condition was imposed by the High Court; or
- (b) after the determination of summary or committal proceedings against the accused person.

(4) Subsection (3) shall not prevent a court from varying a reporting condition to vary the-

- (a) days on which, or the time at which an accused person shall report to a police station; or
- (b) police station to which the accused person shall report.

Discretion to vary bail decision

26. (1) A court with power to hear a bail application may, on its own motion, and on a first appearance by an accused person for an offence-

- (a) grant bail to the person with bail conditions; or
- (b) vary a previous bail decision made for the offence but not so as to refuse bail.

Variation of bail decision if accused person remains in custody

27. (1) A court that has power to hear a variation application may conduct a hearing without an application for bail variation, if

- (a) an accused person is granted bail;
- (b) a reasonable period has passed; and
- (c) a bail condition has not been complied with.

(2) The purpose of the hearing is to review the bail conditions based on reasonable explanation why the accused person has failed to comply with bail conditions imposed on the grant of bail.

(3) A court may conduct a hearing on its own motion or at a request of an accused person or the Commissioner of Correctional Services in consultation with the investigating officer.

(4) A hearing under this section shall not be conducted at a request of a police officer, unless a court is satisfied that a request is made-

- (a) to benefit an accused person; and
- (b) with a consent of the accused person.

(5) If a court decides to conduct a hearing, it shall conduct the hearing as a hearing of variation application except that the powers of a court shall be the powers conferred by this section.

(6) A court may, after hearing a variation application similar to the one referred to in this section,-

- (a) affirm a bail decision and the conditions of bail; or
- (b) vary a bail decision, but not revoke or refuse bail .

Bail conditions not to be varied contrary to court direction

28. (1) A court shall not vary a bail condition imposed by another court that has jurisdiction over the offence.

(2) Variation applications shall be dealt with by the court that heard the bail application.

(3) An accused person and a prosecutor may agree and submit reasons before court, where the judicial officer who granted bail with conditions is unavailable and the variation proceedings are to be heard before a different judicial officer.

Bail security agreements

29. A court, designated to determine bail-

- (a) shall take all reasonable steps to ensure that a person who enters into a bail security agreement is made aware of -

- (i) the obligations of a person under the agreement; and
 - (ii) the consequences that may follow, if a person granted bail fails to comply with his bail acknowledgement;
- (b) shall ensure that any person other than an accused person who enters into a bail security agreement in compliance with a bail condition is given a written notice setting out the terms of the condition; and
- (c) that varies a bail condition that requires entry into a bail security agreement shall ensure that any person , other than the accused person, who entered into a bail security agreement in compliance with the bail condition is given a written notice setting out the terms of the condition as varied.

Reasons for decision to be recorded

30. (1) A court may immediately record the reasons for refusing bail or granting bail.

(2) A court that imposes bail conditions shall make a record that -

- (a) specify the reasons for granting bail with conditions or for not granting bail; and
- (b) sets out the high risk identified by the court.

(3) The record shall include the reasons for court to impose any security requirement or require any character profile.

(4) A court shall record reasons for imposing other conditions where an accused person or any other person requests that certain bail conditions be imposed.

Warrant of apprehension

31. (1) An accused person who has been given warning or is duly served by an indictment and notice of trial or summons, shall appear before court on the day appointed for a hearing of the case.

(2) The court shall, on the day of the hearing, call the name of the accused person at least three times, in or near the court premises to enable the accused to appear before court.

(3) Where an accused person fails to comply with subsection (1), the prosecutor may -

- (a) apply to the court for a warrant for apprehension of the accused person; and
- (b) move the court that the accused person and his sureties, if any, be called to appear before the court, and in default of appearance, that the surety may be declared forfeited.

(4) The declaration for forfeiture in terms of subsection (3)(b) shall have the effect of a judgment on the recognisance for the amounts named against the accused and sureties, respectively.

Prosecutor may make detention application

32. (1) A prosecutor may apply to court for revocation of bail.

(2) An application made for revocation of bail is a detention application.

(3) A court may, after hearing the detention application -

- (a) dispense with bail;
- (b) grant bail;
- (c) refuse or revoke bail;
- (d) affirm the bail decision; or

(e) vary the bail conditions,
if a bail decision is already made.

(5) A court shall not hear a detention application, unless satisfied that the accused person has been given reasonable notice of the application by the prosecutor.

Stay of release decision if detention sought

33. (1) A decision by a court to dispense with bail for a serious offence on a first appearance by an accused person may be stayed immediately, if a prosecutor -

- (a) informs the court that a detention application is to be made to the court; and
- (b) provides the court with a copy of the written approval of an authorised officer or the Director of Public Prosecutions to make a detention application to the court, if bail is granted .

(2) The stay of the decision has effect, until one of the following occurs:

- (a) the court-
 - (i) varies the decision;
 - (ii) substitutes another decision for a bail decision; or
 - (iii) refuses to hear the detention application;
- (b) a police officer or a prosecutor files with the court, notice that the prosecutor does not intend to proceed with the detention application;
 - (ii) 48 hours has passed after the day on which the decision was made;
 - (iii) a bail decision does not entitle a person to be released, where there is a stayed bail or release; or

- (iv) a detention application made to the court when a decision is stayed under this section is to be dealt with as expeditiously as possible.

Limitation on length of adjournments if bail is refused

34. A court shall not adjourn the hearing of the matter for a period exceeding 14 days, except where the-

- (a) accused person consents;
- (b) court is satisfied that there are reasonable grounds for a longer period of adjournment; or
- (c) accused person will be in custody for another offence,

if an accused person is refused bail for the offence.

Notice required if an accused person remains in custody pending bail

35. (1) An accused person, who is in custody awaiting application for bail or where a bail has been granted, but bail condition has not been complied with, shall notify the relevant court upon which such bail application should be heard or bail proceedings are pending.

(2) The notice shall be given to a court that has power to hear the bail application or the variation application before the expiration of 21 days after bail has been granted and the accused person remains in custody.

(3) A notice shall be given once for the grant of bail.

(4) A person who has custody of an accused person while in a correctional center is-

- (a) the Commissioner of Correctional Services or other person who has the control and management of the correctional centre where the accused person is in custody; or
- (b) the person in charge of the lock-up or police station where the accused person is in custody.

(5) The form of a notice or affidavit of the Commissioner of Correctional Services under this section and the information to accompany the notice shall be set out under regulations made pursuant to this Act.

(6) This section does not affect the requirement that an accused person in police custody who is not released by a police officer on warning be brought before a court as soon as practicable.

PART IV

Determination of release by police

Power to make release at a police station

36. (1) For purposes of this part, a police officer includes an officer above the rank of sergeant.

(2) The police shall inform the victim with regard to police release on minor offences.

(3) A police officer may decide on a police release application for Schedule III offence if the person accused of the offence is present at a police station.

- (4) The police officer may release an accused person-
 - (a) on warning; or
 - (b) to be under **surety**.

(5) A police officer may not release an accused person, if the accused person has been arrested under a warrant to bring the person before a court.

(6) A police officer shall, if it is reasonably practicable to do so, ensure that any accused person in police custody who is to make first appearance for an offence, before a court is kept in safe custody or facility.

Procedure after arrest

37. (1) A police officer who grants release or refuses to release an accused person on police release for a minor offence shall, without unreasonable delay, ensure that an accused person is-

- (a) informed of the right to legal representation and the right to bail; and
- (b) provided with a facility for communication purposes to enable him to make communication that the officer is reasonably able to provide.

(2) A police officer may not comply with subsection (1), if he believes, on reasonable grounds, that it is necessary not to comply in order to prevent-

- (a) an accomplice or accused person from escaping; or
- (b) a loss, destruction or fabrication of evidence relating to an offence.

(3) A person shall not be detained in custody for more than 48 hours, unless a warrant for further detention has been obtained.

(4) Subsection (3) excludes the time necessary for the journey from the place of arrest to the subordinate court which has jurisdiction over the matter.

(5) A person arrested without a warrant shall be brought before a subordinate court which has jurisdiction upon a charge of an offence.

(6) If a judicial officer is temporarily absent and there is no other magistrate available who has a jurisdiction over the matter, the accused person may be detained in custody until the return of the judicial officer.

(7) A person may be released, if a charge is not being brought against him.

Review of police release

38. A judicial officer may, on application by a prosecutor or victim, hear a review of a release decision made by a police officer regarding his reason to-

- (a) a release on an accused person; or
- (b) impose a release condition.

PART V

Determination of bail by court

Powers of court to hear bail applications

39. (1) A bail application may be made to, and heard by, a court only, if the court has jurisdiction to hear the application.

(2) A court may hear and make decision or vary a bail decision, after hearing a variation for bail conditions application.

(3) A court may, after hearing the bail application-

- (a) dispense with bail;
- (b) grant bail with bail conditions; or
- (c) refuse the grant of bail,

if a bail decision has already been made.

(4) A court may hear a bail application where-

- (a) an accused person has been convicted or sentenced; or

- (b) proceedings on an appeal against conviction or sentence are pending in another court.

Ultra vires bail

40. (1) A court may not hear a bail application if-
- (a) a decision to determine bail has been made by a different court;
or
 - (b) it has no jurisdiction to hear the application.
- (2) A court may not hear a detention application, if a decision to grant bail has been made by a different court.
- (3) This section does not prevent a court from hearing a-
- (a) bail application, where bail is revoked for a failure or threatened failure to comply with a bail condition; or
 - (b) detention application, where bail is revoked because of a failure or threatened failure to comply with bail acknowledgement or bail condition.

Discretionary grounds to refuse to grant bail application

41. (1) A court may provide reasons to refuse to grant a bail application, if satisfied that the application is -
- (a) frivolous or vexatious; or
 - (b) without substance or otherwise has no reasonable prospect of success.
 - (c) is pending before another court.
- (2) A court, may refuse to hear a bail application, if satisfied that the application could be dealt with as a variation application.

(3) This section shall not apply to a release application or a variation application made by an accused person on a first appearance.

Multiple bail applications to same court not permitted

42. (1) A court that refuses bail for an offence, or that affirms a decision to refuse bail for an offence, after hearing a bail application shall refuse to hear another bail application made by the accused person for the same offence, unless there are new or fresh grounds for making a bail application.

(2) A court that grants or dispenses with bail for an offence, or that affirms a decision to grant or dispense with bail for an offence, after hearing detention application shall refuse to hear another detention application made by the prosecution for the same offence, unless there are grounds for a further detention application.

Subsequent bail application

43. (1) A subsequent bail application shall be dealt with as a new hearing.

(2) In an application done in terms of subsection (1), evidence or information given in relation to an earlier bail decision may be used in support or opposition of the subsequent bail application .

PART VI

Miscellaneous

Discretion to defer bail hearing if accused person is under the influence of drugs

44. (1) A court or police officer may defer making a bail hearing, if an accused person is intoxicated or under the influence of drugs.

(2) For the purpose referred to under subsection (1), a court may -

- (a) adjourn the hearing of the matter, but not for more than 48 hours;
and
- (b) issue a warrant remanding the accused person to a correctional centre or other place of security, until the further hearing of the matter.

Giving directions on bail conditions

45. Where bail is granted subject to a bail condition, a police officer may, where required, give a direction as to -

- (a) circumstances of release specified in the bail condition;
- (b) time of reporting and place of remands; **and**
- (c) consequences of failure to comply with a bail condition.

Actions that may be taken to enforce bail conditions

46. (1) A police officer who believes, on reasonable grounds, that an accused person has failed to comply with, or is about to fail to comply with a bail condition may-

- (a) issue a warning to an accused person;

- (b) issue a notice to an accused person that requires a person to appear before a court;
- (c) request a prosecutor or court to issue and serve a court attendance notice or summons to an accused person, if a police officer believes the failure is an offence;
- (d) arrest an accused person without warrant and take him to court as soon as practicable; or
- (e) apply to a court for a warrant of arrest.

(2) The following matters are to be considered by a police officer in deciding whether to take action, and what action to take, but shall not limit the following matters that may be considered -

- (a) the relative seriousness or triviality of the failure or threatened failure;
- (b) whether an accused person has a reasonable excuse for the failure or threatened failure;
- (c) personal attributes and circumstances of a person to the extent known to a police officer; or
- (d) whether an alternative course of action to arrest is appropriate in the circumstances.

(3) A court may, on application by a police officer under this section, issue a warrant to apprehend an accused person granted bail and bring an accused person before a court.

(4) A **Prosecutor** shall deal with an accused person in accordance with a warrant of arrest issued under this Act or any other law.

Offence of failing to appear

47. (1) An accused person who, without reasonable excuse, fails to appear before a court in accordance with a bail condition, commits an offence and shall upon conviction be sentenced to imprisonment of a term or **a fine prescribed under schedule**.

(2) A person granted bail shall bear the onus to prove reasonable excuse.

(3) In any proceedings for an offence under subsection (1), a document purporting to be a copy of any part of the prescribed record which relates to the time and place appointed for the accused person specified in the record to surrender to custody and duly certified by the appropriate officer of the court to be a true copy of that part of record, shall be evidence of the time and place appointed for the accused person to surrender to custody.

Proceedings for an offence of failure to appear

48. (1) The proceedings for failure to appear -

- (a) before a court may be commenced at any time; and
- (b) for an offence shall be dealt with summarily by the court dealing with an offence for which an accused person failed to appear.

(2) An accused person who is on bail during a trial or appeal and without reasonable grounds, fails to appear for sentencing, shall be deemed to have absconded.

Deposit of bail or bail security

49. (1) A receipt shall be given for a bail deposit or bail security deposited with a court designated to determine bail under a security requirement of a bail condition.

(2) Deposit or security shall, subject to the provisions of any other law, be dealt with as prescribed by the regulations made under this Act.

(3) A court with which bail deposit or security is deposited under a security requirement of a bail condition may require a person who provides the money or security to provide information or agree to a means to enable the return of the money or security when it has to be returned.

Bail guarantor may apply to be discharged of liability

50. (1) A person who enters into a bail security agreement other than the accused person granted bail may, at any time, apply to a court to be discharged of his liability under the agreement.

(2) An application may be made to the court that granted bail or to the court of appearance.

(3) A court shall, if an application for discharge of liability is made and an accused person granted bail is not before court or in custody, issue a -

- (a) warrant to apprehend an accused person and bring the accused person before court; or
- (b) summon an accused person for appearance before the court.

(4) When an accused person granted bail appears before court, the court shall, unless satisfied that it may be unjust to do so, direct that an application be discharged accordingly.

(5) A court that discharges an applicant from liability under a bail security agreement may-

- (a) vary a bail condition of an accused person granted bail; and
- (b) by warrant commit an accused person to a correctional centre or other place of security, until a condition is complied with.

Bail guarantor must not dispose of bail security

51. (1) A person who enters into a bail security agreement under which he deposits bail security shall not dispose of the bail security, or cause or allow the bail security to be disposed of, for the purpose of preventing the bail security from being realised.

(2) A person who disposes of a bail security or cause or allows a bail security from being realised commits an offence and, if convicted, shall be sentenced to imprisonment or to a fine as prescribed under Schedule IV or both.

Revocation of bail where bail security or surety no longer intact

52. (1) A court may at any time revoke a bail of an accused person, if it appears that any bail security deposited with the court has ceased to be intact.

(2) A bail security ceases to be intact, if-

- (a) it ceases to exist;
- (b) its value is diminished; or
- (c) it ceases to be available as security for any reason or ceases to be in the ownership or control of a person by whom it was deposited.

(3) A court shall not revoke a bail of an accused person under this section, unless it has-

- (a) caused written notice of the proposed revocation to be served on the accused person; and
- (b) given the accused person at least 14 days from the date on which a notice was served-
 - (i) to demonstrate to the court that the bail security is still intact; or

- (ii) to arrange for the deposit of replacement or supplementary security.
- (4) A written notice-
 - (a) shall contain such information as the regulations made under this Act may require; and
 - (b) **shall be served upon accused person in accordance with section 56 of this Act.**

Offence of indemnifying bail guarantor

53. A person who indemnifies an accused person or stands as bail guarantor, under a bail security agreement where the accused person does not stand trial commits an offence, if convicted, shall be sentenced to imprisonment or to a fine **or both** as prescribed under Schedule IV.

Return of bail deposit and security

54. (1) A court shall make an order for the return of any bail deposit or bail security deposited in connection with the grant of bail for the offence at the end of the case.

(2) Where the accused has violated a bail condition, the court shall pronounce itself on the fate of the bail deposit and security.

Court attendance notices, warrants and summons

55. The provisions of the Criminal Procedure and Evidence Act, 1981 shall be applicable as necessary in relation to a warrant, summons or court attendance notices.

Court rules

56. (1) The rules consistent with this Act may be made under the High Court Act, 1978⁴ and Subordinate Courts Act 1996⁵ with respect to the powers, authorities, duties or functions of the High Court and the Court of Criminal Appeal in respect of bail.

(2) The rules referred to in subsection (1) may prescribe forms to be used in connection with those powers, authorities, duties or functions.

(3) If the forms are prescribed, they may be used instead of forms prescribed by regulations made under this Act.

Forfeiture order

57. (1) A prosecutor may make an application to a court for forfeiture order of any bail deposit associated with a bail bond, if satisfied that an accused person granted bail has failed to **comply with the bail conditions** in accordance with the bail bond.

(2) **An accused person or the bail guarantor may file an objection to the application in terms of subsection (1).**

(3) **The court may, after consideration of all factors relating to application of forfeiture order-**

- (a) **confirm the order as prayed;**
- (b) **deny the order; or**
- (c) **vary the order as it may deem appropriate.**

Appeals

58. **A person may lodge an appeal against a forfeiture order in the high court against-**

- (a) **denial of bail;**
- (b) **revocation; or**
- (c) **forfeiture order.**

Regulations and Schedules

59. (1) The Minister may by notice published in the Gazette-
- (a) make or amend the Regulations under this Act; and
 - (b) amend a Schedules to this Act.

Repeal and savings

60. (1) Sections 99 to 117 of the Criminal Procedure and Evidence Act, 1981 as amended are repealed.

(2) Notwithstanding subsection (1), anything done under the provisions of the repealed law shall be deemed to have been done under the corresponding provisions of this Act.

(3) A bail undertakings given by a person under section 99 of the Criminal Procedure and Evidence Act, 1981 shall continue in force and be effective as if they are done under this Act.

(4) Section 15(1) of the Motor Vehicle Theft Act, 2000⁶ is repealed.

NOTE

¹ Act No.6 of 2012

² Act No.7 of 2012

³ Act No.9 of 1981

⁴ Act No.5 of 1978

⁵ Act No.132 of 1996

⁶ Act No. 13 of 2000