



Jersey

# **CRIMINAL PROCEDURE (BAIL) (JERSEY) LAW 2017**

## **Official Consolidated Version**

This is an official version of consolidated legislation compiled and issued under the authority of the Legislation (Jersey) Law 2021.

Showing the law from 1 October 2021 to Current



Jersey

## CRIMINAL PROCEDURE (BAIL) (JERSEY) LAW 2017

### Contents

#### Article

<b>PART 1</b>	<b>4</b>
<hr/>	
INTERPRETATION AND APPLICATION	4
1 Interpretation .....	4
2 Meaning of “criminal proceedings” .....	5
3 Meaning of “defendant” .....	5
4 References to period of 48 hours .....	6
5 Application .....	6
6 Power to amend Part 1 by Regulations .....	6
<b>PART 2</b>	<b>6</b>
<hr/>	
BAIL	6
7 Duty of court to consider bail and defendant’s general right to bail .....	6
8 Exceptions to right to bail .....	7
9 Application for bail or variation of conditions of bail .....	7
10 Decisions and reasons .....	7
11 The grant of bail subject to conditions .....	8
12 The grant of bail subject to a security or surety .....	8
13 Forfeiture of security .....	9
14 Surety’s liability where defendant fails to surrender to custody or breaches conditions .....	10
15 Right of prosecutor to appeal against Magistrate’s decision to grant bail .....	11
16 Right of defendant to appeal against Magistrate’s decision to deny bail .....	11
17 Court order for arrest .....	11
18 Police power of arrest .....	12
<b>PART 3</b>	<b>12</b>
<hr/>	
OFFENCES AND FINAL PROVISIONS	12
19 Offence of agreeing to indemnify a surety .....	12
20 Offence of failing to surrender to custody .....	12
21 Regulations and Criminal Procedure Rules .....	13
<a href="https://www.jerseylaw.je/laws/current/Pages/07.770.aspx22">https://www.jerseylaw.je/laws/current/Pages/07.770.aspx22</a> .....	13
23 .....	13
24 Citation and commencement .....	13

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<b>SCHEDULE 1</b>	<b>14</b>
EXCEPTIONS TO GENERAL RIGHT TO BAIL	14
1 Defendant presents substantial risk.....	14
2 Defendant’s own protection or welfare.....	14
3 To facilitate the obtaining of information.....	14
4 Defendant’s case adjourned for inquiries.....	14
5 Defendant convicted of offence punishable with imprisonment.....	14
6 Defendant serving sentence of imprisonment.....	14
7 Relevant considerations under paragraph 1.....	15
<b>SCHEDULE 2</b>	<b>16</b>
4 16	
<b>SCHEDULE 3</b>	<b>16</b>
<b>ENDNOTES</b>	<b>17</b>
Table of Legislation History.....	17
Table of Endnote References.....	17

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Jersey

## CRIMINAL PROCEDURE (BAIL) (JERSEY) LAW 2017

A LAW to make provision for, or in connection with the granting of bail by a court in criminal proceedings; to amend the [Police Procedures and Criminal Evidence \(Jersey\) Law 2003](#) in relation to police bail and detention; and for connected purposes.

Commencement [[see endnotes](#)]

### PART 1

#### INTERPRETATION AND APPLICATION

##### 1 Interpretation

- (1) In this Law, unless the context otherwise requires –
- “Criminal Procedure Law” means the [Criminal Procedure \(Jersey\) Law 2018](#); <https://www.jerseylaw.je/laws/current/Pages/07.595.aspx> “Criminal Procedure Rules” shall be construed in accordance with Articles 111(1) and 112 of the Criminal Procedure Law;
- “criminal proceedings” shall be construed in accordance with Article 2;
- “court” means –
- the Magistrate’s Court and, where the context so indicates, the Magistrate;
  - the Royal Court; and
  - the Youth Court;
- “defendant” shall be construed in accordance with Article 3;
- “Mental Health Law” means the [Mental Health \(Jersey\) Law 2016](#);
- “police officer” includes an officer of the Impôts within the meaning of the [Customs and Excise \(Jersey\) Law 1999](#);
- “prescribed” means prescribed by Criminal Procedure Rules;
- “prosecutor” in criminal proceedings –
- before the Magistrate’s Court, Royal Court and Youth Court, has the meaning given in Article 1(2)(b) of the Criminal Procedure Law;
  - before the Magistrate’s Court and Youth Court, includes a Centenier, and the expression “prosecution” shall be construed accordingly;

<https://www.jerseylaw.je/laws/current/Pages/07.280.aspx> “security” shall be construed in accordance with Article 12(1)(a);

“surrender to custody” means, in relation to a defendant granted bail, surrendering himself or herself into the custody of the court (according to the requirements of the grant of bail) at the time and place appointed for the defendant to do so;

“surety” means a person who, under Article 12(4), is approved by the court to secure a defendant’s surrender to custody;

“vary” means, in relation to bail, imposing further conditions after bail is granted, varying existing conditions or lifting any or all existing conditions.<sup>1</sup>

(2) References in this Law to –

- (a) the “grant of bail” shall be construed as bail –
  - (i) subject to Article 5, grantable under any enactment,
  - (ii) taken to be grantable in the proceedings referred to in Article 2(d), or
  - (iii) grantable under any rule of customary law;
- (b) a defendant having previously been granted bail includes bail granted before the coming into force of this Law.

## 2 Meaning of “criminal proceedings”

For the purposes of this Law, “criminal proceedings” in relation to a defendant means –

- (a) proceedings before a court in respect of an offence;
- (b) proceedings under Part 8 or 9 of the Mental Health Law;
- (c) proceedings under Article 4(2)(a) of the [Criminal Justice \(Suspension of Prison Sentences\) \(Jersey\) Law 2003](#); or
- (d) proceedings in relation to a person who, having been convicted of an offence –
  - (i) is awaiting sentence,
  - (ii) is to be committed to the Royal Court under Article 1 of the [Criminal Justice \(Probation Orders\) \(Jersey\) Law 1986](#), or
  - (iii) appears or is brought before a court, or is to be committed to the Royal Court, under Article 7 or 8 of the [Criminal Justice \(Community Service Orders\) \(Jersey\) Law 2001](#).

## 3 Meaning of “defendant”<sup>2</sup>

For the purposes of this Law, “defendant” means a person –

- (a) charged with an offence;
- (b) convicted of an offence and awaiting sentence;
- (c) in relation to whom a finding is made under Article 59 or 72 of the Mental Health Law; or
- (d) who is the subject of proceedings referred to in paragraphs (c) and (d) of the definition “criminal proceedings”.
- (e)
- (f)

#### 4 References to period of 48 hours

- (1) This Article applies where any provision of this Law requires something to be done or to occur within 48 hours.
- (2) In determining when the period of 48 hours expires, there shall be disregarded Christmas Day, Good Friday and any Sunday.

#### 5 Application

- (1) Subject to paragraphs (2) and (3), this Law applies to bail grantable in, or in connection with criminal proceedings.
- (2) This Law does not apply to bail grantable under the [Court of Appeal \(Jersey\) Law 1961](#).<sup>3</sup>

<https://www.jerseylaw.je/laws/current/Pages/07.245.aspx>(3) Except as provided in Article 98A of the [Extradition \(Jersey\) Law 2004](#), and Article 14(2) of the [International Criminal Court \(Jersey\) Law 2014](#), this Law does not apply to bail grantable in, or in connection with proceedings under those Laws.

#### 6 Power to amend Part 1 by Regulations

The States may by Regulations –

- (a) amend this Part; and
- (b) make such supplementary, incidental, consequential, transitional, transitory or savings provision as appears to the States to be necessary or expedient for the purposes of that amendment.

## PART 2

### BAIL

#### 7 Duty of court to consider bail and defendant's general right to bail

- (1) On each occasion upon which a defendant appears before the court in criminal proceedings, it shall be the duty of the court to consider whether the defendant should be granted bail pending the determination of those proceedings, including any occasion where the defendant applies to the court for a variation of his or her conditions of bail.
- (2) Except as provided in Schedule 1, a defendant has the right to be granted bail whenever he or she is brought before the court in the course of, or in connection with criminal proceedings.
- (3) A defendant granted bail is under a duty to surrender to custody, and must not absent himself or herself from the court without the court's permission.
- (4) If the court denies the defendant bail on the first occasion he or she appears before it, the defendant may, on the next occasion he or she appears before that court, or any other court in the proceedings, support an application for bail with any argument as to fact or law that the defendant wishes to put forward.

- (5) On any subsequent occasion that the defendant applies for bail, the court need not hear arguments as to fact or law which that court, or any other court, has heard previously.

## **8 Exceptions to right to bail**

Schedule 1 sets out the exceptions to the right to be granted bail.

## **9 Application for bail or variation of conditions of bail**

- (1) Any application for bail or for a variation of the conditions of bail may be conducted in open court, and any application for a variation of the conditions of bail may be conducted without a hearing if the defendant, the prosecution and any surety so agree.
- (2) If the court grants bail subject to conditions, it may subsequently vary any such conditions –
  - (a) of its own motion;
  - (b) on the application of the defendant or the prosecution; or
  - (c) on the application of a surety.
- (3) An application for bail or for a variation of the conditions of bail may be made orally or in such form as may be prescribed or, in the absence of a prescribed form, in such written form as the court requires.

## **10 Decisions and reasons**

- (1) Where the court –
  - (a) grants a defendant bail;
  - (b) denies a defendant bail;
  - (c) imposes, or varies any of the conditions of bail; or
  - (d) appoints a time or place or a different time or place for a defendant to surrender to custody,the court shall make a record of the decision in such form as may be prescribed or, in the absence of a prescribed form, in such written form as the court determines.
- (2) Subject to paragraph (6), the court shall provide the defendant with a copy of the record of the decision as soon as practicable after the record is made.
- (3) Where paragraph (1)(b) or (c) applies, the record of the decision shall include the reasons for denying bail or imposing or varying any condition of bail.
- (4) In a case where the court grants a defendant bail after hearing representations from the prosecutor in favour of denying bail, then the court shall also give reasons for granting bail.
- (5) Where paragraph (4) applies –
  - (a) the record of the decision shall include the reasons for granting bail; and
  - (b) if requested to do so by the prosecutor, the court shall provide the prosecutor with a copy of the record of the decision as soon as practicable after the record is made.

- (6) The court need not provide a copy of the record of the decision to the defendant where he or she has legal representation unless that defendant's legal representative requests the court to do so.

## **11 The grant of bail subject to conditions**

- (1) Except as provided under paragraph (2), the court shall not impose conditions on the grant of bail to a defendant.
- (2) A defendant may be required to comply, before he or she is released on bail or later, with such conditions as appear to the court to be necessary –
  - (a) to secure that the defendant surrenders to custody;
  - (b) to secure that the defendant attends a parish hall inquiry;
  - (c) to secure that the defendant does not commit an offence while on bail;
  - (d) to secure that the defendant does not interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or herself, or any other person;
  - (e) for the purpose of enabling inquiries or a report to be made; or
  - (f) for the defendant's own protection or, if the defendant is under the age of 18, for the defendant's own welfare or in the defendant's own interests.

## **12 The grant of bail subject to a security or surety**

- (1) Before a defendant is released on bail the court may, as a condition of bail, require the defendant to do either or both of the following –
  - (a) provide a security for the defendant's surrender to custody which shall be –
    - (i) of such an amount as the court may order, and
    - (ii) deposited with the Viscount before the defendant is released from the custody of the court;
  - (b) propose a person who agrees to stand as surety to secure the defendant's surrender to custody.
- (2) The security referred to in paragraph (1)(a) may be provided by the defendant or on his or her behalf.
- (3) In considering the suitability of a proposed surety, the court may have regard (amongst other things) to the surety's –
  - (a) financial resources;
  - (b) character and any previous convictions; and
  - (c) proximity (whether as an associated person, in place of residence or otherwise) to the defendant.
- (4) If the court is satisfied as to the suitability of the proposed surety, it shall approve that person to stand as the defendant's surety.
- (5) Upon approving the surety, the court shall fix the amount in which the surety is to be bound and Article 14 shall apply in respect of that surety if the defendant fails to surrender to custody.
- (6) Where bail is granted subject to a surety, it is also a condition of that bail that if the surety believes at any time that the defendant is unlikely to surrender to custody –



- (a) the surety must inform a police officer forthwith; and
  - (b) the surety must as soon as practicable deliver to a police officer a statement in writing by the surety confirming the information.
- (7) If a parent or guardian of a defendant under the age of 18 agrees to stand as surety for the defendant, for the purposes of this Article, the parent or guardian may be required to secure that the defendant complies with any other conditions imposed on him or her under Article 11.
- (8) However –
- (a) a requirement cannot be imposed on a parent or guardian under paragraph (7) where it appears that the defendant will attain the age of 18 before the time appointed for the defendant to surrender to custody;
  - (b) the parent or guardian –
    - (i) cannot be required to secure compliance with any condition to which his or her agreement does not extend, and
    - (ii) cannot in respect of those conditions to which his or her agreement does extend, be bound in a sum greater than a sum equivalent to level 1 on the standard scale.
- (9) Article 14 also applies in respect of a surety who, under paragraph (7), is required to secure that the defendant complies with any other conditions imposed on him or her under Article 11 and the defendant fails to comply with any such conditions.
- (10) If, at any time, the court orders a reduction in the amount of security previously ordered to be deposited under paragraph (1)(a), the Viscount shall, as soon as is reasonably practicable, repay the excess amount of security to the defendant or the person who provided it on the defendant's behalf.
- (11) The amount of security deposited with the Viscount under paragraph (1)(a) shall, unless ordered as forfeited under Article 13, be repaid to the defendant or the person who provided it on the defendant's behalf –
- (a) when the condition of bail to provide a security is lifted; or
  - (b) at the conclusion of the proceedings,
- whichever occurs first.

### **13 Forfeiture of security**

- (1) Where a defendant has provided a security under Article 12(1)(a), or a security is provided on his or her behalf under Article 12(2) and the court is satisfied that the defendant has failed to surrender to custody then, unless it appears that the defendant had a reasonable excuse for that failure, the court may order the forfeiture of the security.
- (2) If the court orders the forfeiture of a security under paragraph (1), the court may order that the forfeiture extends to such amount less than the full value of the security as it thinks fit.
- (3) An order under paragraph (1) shall, unless previously revoked, take effect at the end of 21 days beginning with the day on which it is made.
- (4) An application may be made to the court to show that the defendant had a reasonable excuse for his or her failure to surrender to custody.
- (5) An application under paragraph (4) shall be made in the prescribed form, and may be made –

- (a) by or on behalf of the defendant; or
  - (b) by the person who provided the security.
- (6) If, on application under paragraph (4), the court is satisfied that the defendant did, after all, have a reasonable excuse for his or her failure to surrender to custody, the court may order –
- (a) remission of the full value of the forfeited security; or
  - (b) that the forfeiture extends to such amount less than the full value of the security as it thinks fit.
- (7) An application under paragraph (4) may be made before or after the order for forfeiture has taken effect, but shall not be entertained unless the court is satisfied that the prosecutor was given reasonable notice of the applicant's intention to make it.
- (8) A security which is forfeited under paragraph (1) shall be administered by the Viscount as if it were a fine imposed by the court.
- (9) Where an order is made under paragraph (6), any money which would have fallen to be repaid to the defendant or other person who provided the security, shall remain deposited with the Viscount to be repaid to the defendant or other person, in accordance with Article 12(11).

#### **14 Surety's liability where defendant fails to surrender to custody or breaches conditions**

- (1) This paragraph applies where –
- (a) a defendant is granted bail subject to a surety and that defendant fails to surrender to custody; or
  - (b) in a case in respect of which Article 12(9) applies, a defendant fails to comply with any other conditions imposed on him or her.
- (2) Where paragraph (1)(a) applies, the court shall summons the surety to appear before the court at the time, and on the date specified in the summons to show cause as to why he or she should not be required to pay the amount in which he or she is bound.
- (3) Where paragraph (1)(b) applies, the court may, if it is satisfied that the surety has failed to secure the defendant's compliance with his or her conditions of bail, summons the surety to appear before the court at the time, and on the date specified in the summons to show cause as to why he or she should not be required to pay the amount in which he or she is bound.
- (4) The court may proceed in the absence of any surety if it is satisfied that he or she has been served with the summons.
- (5) The form, content and service of a summons under this Article shall be prescribed.
- (6) The court may order that the whole or part only of the amount in which the surety is bound shall be forfeited, or may discharge the surety from any liability to pay that amount.
- (7) Payment of any amount ordered to be forfeited under this Article, including any costs awarded against the defendant, shall be paid to the Viscount and that amount –
- (a) shall be administered as if it were a fine imposed by the court; and
  - (b) if required, shall be recoverable in such manner as shall be prescribed.

**15 Right of prosecutor to appeal against Magistrate's decision to grant bail**

- (1) This Article applies where the Magistrate, having heard representations from the prosecutor that bail should not be granted to a defendant who is charged with or convicted of an offence punishable with imprisonment, grants bail to the defendant.
- (2) The prosecutor may, subject to paragraph (3) and in accordance with paragraph (4), appeal to the Royal Court against the granting of bail.
- (3) An appeal under this Article may only be made on the ground that the Magistrate's decision was unreasonable in all the circumstances of the case.
- (4) The prosecutor must –
  - (a) give oral notice of appeal to the Magistrate at the conclusion of the proceedings in which bail has been granted, and before the defendant is released from custody; and
  - (b) serve written notice of appeal on the Magistrate and on the defendant, within 2 hours of the conclusion of the proceedings.
- (5) Upon oral notice of appeal being given, the Magistrate shall remand the defendant in custody until the appeal is determined or otherwise disposed of.
- (6) The appeal shall be deemed to have been disposed of if the prosecutor fails to serve either or both of the notices required by paragraph (4)(b), within the time required by that provision.
- (7) The hearing of an appeal under this Article shall commence as soon as is reasonably practicable after oral notice is given under paragraph (4)(a).
- (8) The Royal Court, when hearing an appeal under this Article, may remand the defendant in custody or grant bail subject to such conditions as it thinks fit.
- (9) In the case of a defendant under the age of 18, the reference in paragraph (1) to an offence punishable with imprisonment is to be read as a reference to an offence which would be so punishable in the case of a defendant aged 18 or over.
- (10) There shall be no right of appeal against a decision of the Royal Court under this Article.

**16 Right of defendant to appeal against Magistrate's decision to deny bail**

- (1) If the Magistrate denies a defendant bail in criminal proceedings, the defendant may appeal to the Royal Court against that decision.
- (2) An appeal under this Article may only be made on the ground that the Magistrate's decision was unreasonable in all the circumstances of the case.
- (3) There shall be no right of appeal against a decision of the Royal Court under this Article.

**17 Court order for arrest**

- (1) The court may order the arrest of a defendant granted bail –
  - (a) if the defendant fails to surrender to custody at the time appointed for him or her to do so; or
  - (b) if it appears to the court that the defendant has broken any of the conditions of his or her bail.

- (2) The court may order the arrest of a defendant granted bail if the defendant, having surrendered to custody, absents himself or herself from that court –
  - (a) before the court is ready to commence or resume the hearing of the proceedings in the defendant's case; and
  - (b) without, or otherwise than in accordance with any, permission given to the defendant by or on behalf of the court.
- (3) An order under paragraph (1) or (2) authorizes every police officer or the Viscount to arrest and detain the defendant to whom the order relates and to bring the defendant before the court.
- (4) A defendant arrested and detained under this Article shall be brought before the court within 48 hours of his or her arrest.

## **18 Police power of arrest**

- (1) A police officer may arrest a defendant granted bail –
  - (a) if the officer has reasonable grounds for believing that the defendant is not likely to surrender to custody;
  - (b) if the officer has substantial grounds for believing that the defendant is likely to break any of the conditions of his or her bail or has reasonable grounds for suspecting that the defendant has broken any of those conditions; or
  - (c) where a defendant was granted bail subject to a surety, if that surety notifies a police officer, in writing, that the defendant is unlikely to surrender to custody and, for that reason, the surety wishes to be relieved of his or her obligations as a surety.
- (2) A defendant arrested under this Article shall be brought before the court within 48 hours of his or her arrest.

## **PART 3**

### **OFFENCES AND FINAL PROVISIONS**

## **19 Offence of agreeing to indemnify a surety**

- (1) If a person agrees with another to indemnify that other against any liability which that other may incur as a surety to secure the surrender to custody of a defendant, he or she and that other person shall be guilty of an offence.
- (2) An offence under this Article is committed whether the agreement is made before or after the person to be indemnified becomes a surety and whether or not he or she becomes a surety and whether the agreement contemplates compensation in money or in money's worth.
- (3) A person guilty of an offence under this Article shall be liable to imprisonment for a term not exceeding 12 months and to a fine.

## **20 Offence of failing to surrender to custody**

- (1) A defendant granted bail who, without reasonable excuse, fails to surrender to custody shall be guilty of an offence.

- (2) A defendant granted bail who, with reasonable excuse, fails to surrender to custody shall be guilty of an offence if he or she fails to surrender to custody, as soon as is reasonably practicable.
- (3) It shall be for the defendant to prove that he or she had a reasonable excuse for his or her failure to surrender to custody.
- (4) The fact that a defendant has not been given a copy of the record of the decision to grant him or her bail, shall not constitute a reasonable excuse for his or her failure to surrender to custody.
- (5) A defendant guilty of an offence under paragraph (1) or (2) shall be liable to imprisonment for a term not exceeding 12 months and to a fine.
- (6) In any proceedings for an offence under paragraph (1) or (2), a document purporting to be a certified copy of the part of the decision to grant the defendant bail which relates to the time and place appointed for the defendant to surrender to custody shall be evidence of the time and place appointed for the defendant's surrender to custody.
- (7) Criminal Procedure Rules shall specify how and by whom copies may be certified for the purposes of paragraph (6).<sup>4</sup>

## **21 Regulations and Criminal Procedure Rules<sup>5</sup>**

- (1) The States may, by Regulations make such transitional provision as appears to the States to be necessary or expedient for the purposes of bringing this Law into force.
- (2) The States may, by Regulations amend any enactment including this Law for the purpose of making such transitional, transitory, consequential, incidental, supplementary or saving provision as they consider necessary or expedient in respect of any provision made by or under this Law.
- (3) The power to make Regulations under paragraph (1) includes the power to make any supplementary, incidental, consequential, transitory or saving provision which appear to the States to be necessary or expedient for the purposes of the Regulations.
- (4) The power to make Criminal Procedure Rules under Article 112 of the Criminal Procedure Law includes the power to make rules for the purposes of this Law.<sup>6</sup>

<https://www.jerseylaw.je/laws/current/Pages/07.770.aspx>**22** <sup>7</sup>

**23** <sup>8</sup>

## **24 Citation and commencement**

This Law may be cited as the Criminal Procedure (Bail) (Jersey) Law 2017 and shall come into force on such day or days as the States may by Act appoint.

**SCHEDULE 1**

(Article 8)

**EXCEPTIONS TO GENERAL RIGHT TO BAIL***Exceptions to right to bail***1 Defendant presents substantial risk**

A defendant's right to be granted bail may be denied if the court is satisfied that there are substantial grounds for believing that the defendant, if granted bail (whether subject to conditions or not) would –

- (a) fail to surrender to custody;
- (b) commit an offence whilst on bail;
- (c) interfere with witnesses or otherwise obstruct the course of justice, whether in relation to the defendant or any other person.

**2 Defendant's own protection or welfare**

A defendant's right to be granted bail may be denied if the court is satisfied that the defendant should be kept in custody for his or her own protection or, if the defendant is under the age of 18, for his or her own welfare.

**3 To facilitate the obtaining of information**

A defendant's right to be granted bail may be denied where the court is satisfied that it has not been practicable to obtain sufficient information for the purposes of taking decisions required under this Schedule for want of time since the institution of proceedings against the defendant.

**4 Defendant's case adjourned for inquiries**

A defendant's right to be granted bail may be denied where the defendant's case is adjourned for inquiries or a report and it appears to the court that it would be impracticable to complete the inquiries or make the report without keeping the defendant in custody.

**5 Defendant convicted of offence punishable with imprisonment**

A defendant's right to be granted bail may be denied if a defendant has been convicted of an offence punishable with imprisonment and is awaiting sentence.

**6 Defendant serving sentence of imprisonment**

A defendant's right to be granted bail may be denied if the defendant is in custody serving a sentence of imprisonment.

*Reasons for denying right to bail***7 Relevant considerations under paragraph 1**

In determining for the purposes of paragraph 1 whether the court is satisfied that there are substantial grounds for believing that a defendant, if granted bail (whether subject to conditions or not), would do anything specified under that paragraph, the court shall have regard to such of the following considerations as appear to it to be relevant –

- (a) the nature and seriousness of the offence or default (and the probable method of dealing with the defendant for it);
- (b) the character, antecedents, associations and community ties of the defendant;
- (c) the defendant's record as respects fulfilment of his or her obligations under previous grants of bail;
- (d) except in the case of a defendant whose case is adjourned for inquiries or a report, the strength of the evidence of the defendant having committed the offence or having defaulted;
- (e) the risk that the defendant may engage in conduct that would, or would be likely to, cause physical or mental harm to any person other than the defendant,

as well as any other considerations which also appear to the court to be relevant.

**SCHEDULE 2<sup>9</sup>**

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(a)

(b) [not in force]

(11)

(12) .”

**SCHEDULE 3<sup>10</sup>**



## ENDNOTES

### Table of Legislation History

Legislation	Year and No	Commencement	°Projet No (where applicable)
Criminal Procedure (Bail) (Jersey) Law 2017	<a href="#">L.20/2017</a>	24 July 2019 – except substituted Article 30(10)(b) of the Police Procedures and Criminal Evidence (Jersey) Law 2003 set out in paragraph 4 of Schedule 2 ( <a href="#">R&amp;O.62/2019</a> )  Not in force – substituted Article 30(10)(b) of the Police Procedures and Criminal Evidence (Jersey) Law 2003 set out in paragraph 4 of Schedule 2	<a href="#">P.118/2017</a>
Criminal Procedure (Jersey) Law 2018	<a href="#">L.25/2018</a>	1 October 2021 ( <a href="#">R&amp;O.95/2021</a> )	P.118

°Projets available at [www.statesassembly.gov.je](http://www.statesassembly.gov.je)

### Table of Endnote References

<sup>1</sup> Article 1(1)	<i>amended by L.25/2018</i>
<sup>2</sup> Article 3	<i>amended by L.25/2018</i>
<sup>3</sup> Article 5(2)	<i>substituted by L.25/2018</i>
<sup>4</sup> Article 20(7)	<i>amended by L.25/2018</i>
<sup>5</sup> Article 21	<i>heading amended by L.25/2018</i>
<sup>6</sup> Article 21(4)	<i>substituted by L.25/2018</i>
<sup>7</sup> Article 22	<i>spent, omitted</i>
<sup>8</sup> Article 23	<i>spent, omitted</i>
<sup>9</sup> Schedule 2	<i>spent (except substituted Article 30(10)(b)), omitted</i>
<sup>10</sup> Schedule 3	<i>spent, omitted</i>