

Bail Act 1982 ("the Bail Act")

Practice Directions

1. Except for a charge of wilful murder or murder and without diminishing the functions and powers of a Judge -
 - (a) when an accused appears before a Magistrate on a charge or charges for which the President or another Judge of the Court has previously granted, refused or revoked bail or ordered an arrest warrant to issue then the Magistrate can and should hear and determine an application for bail, and
 - (b)(i) an accused should not be transported from the region of any resident Magistrate(s) in country Western Australia ("the Magisterial Region") to Perth unless the transportation is because the President or another Judge or a Magistrate has refused bail or granted bail on conditions that have not been met, and
 - (ii) if this requirement in paragraph 1(b)(i) has not been satisfied then before the accused is transported, first, a Magistrate in the Magisterial Region or the region that would normally deal with the matter should be sought to hear and determine bail with the accused appearing in person or by use of videolink or telephone/audio link as the circumstances allow and if no such Magistrate is available then secondly, a Magistrate usually based at 160 Pier Street, Perth or there at the time should be sought to hear and determine bail with the accused appearing by videolink or telephone/audio link as the circumstances allow.
 - (iii) if no Magistrate as described in this paragraph is available then before the defendant is transported the matter of bail should be referred to the President or the Judge exercising Presidential powers to be heard and determined by videolink or telephone/audio link as the circumstances allow.

This practice direction is effective as from and including 14 April 2008.

Explanatory Comments

2. At present a protocol or practice exists whereby if on a particular charge the President or a Judge of the Court has -
 - (a) granted or refused bail, or
 - (b) ordered an arrest warrant to issue,then thereafter for that charge a Magistrate of the Court cannot or should not exercise any powers under the *Bail Act* including to grant, refuse or revoke bail or to vary the terms or conditions of any bail previously granted.

3. As a consequence of this protocol or practice some children and particularly some Aboriginal children who usually reside in the Kimberley, the Pilbara, the Goldfields, the Mid West or other country areas of Western Australia -
 - (a) remain in custody for longer than desirable prior to being taken before the Court for bail to be considered, and
 - (b) some are undesirably removed from their community or country town and transported to Perth without a Magistrate having made a decision on bail.

- 4(1) As a matter of law a Magistrate has co-extensive jurisdiction under the *Bail Act* with the President and a Judge of the Court except on a charge of wilful murder or murder as provided in section 15 of the *Bail Act* and subject to the President's power to rehear as provided in section 28 of the *Children's Court of Western Australia Act 1988*.

- 4(2) Therefore except for a charge of wilful murder or murder and subject to the *Bail Act* a Magistrate can -
 - (a) grant bail or vary the terms or conditions of bail previously granted by the President or another Judge of the Court if the Magistrate finds it appropriate to do so on being satisfied of any of the circumstances provided in Schedule 1 Part B clause 4 of the *Bail Act*;
 - (b) revoke bail previously granted by the President or another Judge of the Court if satisfied that any of the circumstances provided in section 55 of the *Bail Act* apply; and
 - (c) consider bail on the return of an arrest warrant issued on the order of the President or another Judge of the Court pursuant to Schedule 1 Part A clause 6 of the *Bail Act*.

Purposes of this Practice Direction

- 5(1) It is desirable that this protocol or practice is not applied when doing so would result in unnecessary delay in making decisions on bail and also unnecessary transportation of children from their own country area to Perth.
- 5(2) The purposes of these practice directions are to expedite bail decisions and to also prevent such unnecessary transportations.

**His Honour Judge D J Reynolds
PRESIDENT**

Dated this 8th day of April 2008