



**St Helena
Government**

ST HELENA GOVERNMENT

**POLICE AND CRIMINAL EVIDENCE (AMENDMENT)
BILL, 2021**



ST HELENA

A BILL

FOR

AN ORDINANCE

to amend the Police and Criminal Evidence Ordinance, 2003, to provide for pre-charge bail, conditions and the variation of conditions for same; and for connected and incidental purposes.

Enacted by the Governor of St Helena with the advice and consent of the Legislative Council of St Helena.

Short title, commencement and interpretation

1. (1) This Ordinance may be cited as the Police and Criminal Evidence (Amendment) Ordinance, 2021.

(2) In this Ordinance “the principal Ordinance” means the Police and Criminal Evidence Ordinance, 2003.

Amendment of section 17 - entry and search after arrest

2. Section 17(5)(a) of the principal Ordinance is amended by inserting after the words “to the police station” the words “or releasing the person pursuant to section 28A”.

Insertion of section 27A - bail following arrest after voluntary attendance

3. The principal Ordinance is amended by inserting after section 27 the following section—

“Bail following arrest

27A. (1) A person who attends a police station pursuant to section 27 and is arrested but not charged with an offence may be treated as a person arrested in accordance with section 28 and may be released on bail in accordance with section 28A.

(2) A person released on bail in accordance with section 31(5), 33(2), 37(4), 38(9) is considered to be released on bail in accordance with section 28A(1)(b).”.

Amendment of section 28 - arrest elsewhere than at a police station

4. Section 28 of the principal Ordinance is amended as follows—
- (a) in subsection (1) by inserting after the words “other than the police station,” the words “subject to section 28A,”;
 - (b) in subsection (8) by repealing the words “Subsection (1) does not prevent” and substituting the words “Neither subsection (1) nor section 28A prevents”; and
 - (c) in subsection (9) by inserting after the words “arrives at the police station” the words “or is released in accordance with section 28A”.

Insertion of sections 28A to 28F

5. The principal Ordinance is amended by inserting after section 28 the following sections—

“Release of a person arrested elsewhere than at a police station

28A. (1) A police officer may release a person arrested in accordance with section 28(1)—

- (a) without bail; or
- (b) on bail if—
 - (i) the police officer is satisfied that the release of the person on bail is necessary and proportionate in all the circumstances, having regard, in particular, to any conditions of bail which would be imposed; and
 - (ii) a police officer of the rank of sergeant or above authorises the release on bail, having considered any representations made by the person.

(2) Unless subsection (1)(b) is satisfied, a police officer must release a person arrested in accordance with section 28(1) without bail.

(3) A person may be released in accordance with subsection (1) at any time and is not required to be brought to a police station.

- (4) Where a person is released on bail pursuant to subsection (1)(b)—
 - (a) the person must be required as a condition of bail to attend a police station;
 - (b) no recognizance for the person's surrender to custody shall be taken from the person;
 - (c) no security for the person's surrender to custody shall be taken from the person or from anyone else on the person's behalf; and
 - (d) the person shall not be required to provide a surety or sureties for the person's surrender to custody.

(5) Subject to subsection (4) a police officer who releases a person on bail in accordance with subsection (1)(b) may impose, as a condition of bail, any requirement that appears to the police officer to be necessary—

- (a) to secure the person's surrender to custody;
- (b) to secure that the person does not commit an offence while on bail;
- (c) to secure that the person does not interfere with a witness or otherwise obstruct the course of justice, whether in relation—
 - (i) to the person; or

- (ii) to any other person, or
- (d) for the person's own protection or, if the person is under the age of 18, for the person's own welfare or in the person's own interests.

(6) A requirement imposed as a condition of bail on a person released on bail in accordance with subsection (1)(b) must be in accordance with subsection (4) and (5).

(7) For the purpose of subsection (4)(a), the police station a person is required to attend may or may not be specified.

Notice under section 28A

28B. (1) A police officer who releases a person in accordance with section 28A must, prior to the release of the person, issue the person being released with a notice in writing which specifies—

- (a) the offence for which the person was arrested;
- (b) the ground on which the person was arrested and
- (c) whether the person is being released without bail or on bail.

(2) Where a person is being released on bail, the notice issued pursuant to subsection (1) must also—

- (a) inform the person that the person is required to attend a police station; and
- (b) specify—
 - (i) if applicable, the police station which the person is required to attend; and
 - (ii) the time on the bail end date when the person is required to attend the police station.

(3) Where bail is subject to conditions pursuant to section 28A(5) the notice issued in accordance with subsection (1) must—

- (a) also specify the requirements imposed by the conditions; and
- (b) explain the circumstances and procedures applicable for the variation of conditions pursuant to section 28H and 28I.

(4) A person may be required to attend a different police station from that specified in the notice under subsection (1) or to attend at a different time or an additional time and in such circumstances the person must, in writing, be informed of the location of the police station the person is required to attend and the applicable or additional times for which attendance is required.

Interpretation for section 28C, 28D and 28E

28C. For the purpose of section 28D and 28E—

- (a) “bail end date”, in relation to a person, means the last day of a person’s bail period; and
- (b) “bail period” means, subject to section 28D and 28E, the period of 28 days beginning with a person’s bail start date; and
- (c) “bail start date” means the day after the day on which the person was arrested for the offence in relation to which bail is granted under section 28A.

Bail period and extension

28D. (1) A person—

- (a) is not required under subsection 28B(4) to attend a police station at a time which is after the bail end date in relation to the person; and
- (b) is not required to attend a police station if the person has been notified in writing that the person's attendance is no longer required.

(3) If a person is required to attend a police station which is not a designated detention centre the person, not more than 6 hours after the person's arrival, must be—

- (a) released; or
- (b) taken to a designated detention centre.

(4) Subject to subsection (5) and (6) the bail period of a person may be extended by a police officer of the rank of inspector or above so that it ends at the end of the period of 3 months beginning with the person's bail start date.

(5) For the bail period of a person to be extended in accordance with subsection (4) the police officer approving the extension of the bail period must be satisfied—

- (a) that the person's bail end date has not expired;
- (b) that the release of the person on bail is necessary and proportionate in all the circumstances;
- (c) that the investigation in relation to the offence in respect of which bail was granted under section 28A is being conducted diligently and expeditiously; and
- (d) that there are reasonable grounds for suspecting that the person for whom the bail end period is being extended is guilty of the offence in relation to which bail was granted under section 28A.

(6) In addition to being satisfied in accordance with subsection (5) a police officer approving the extension of a person's bail period in accordance with subsection (4) must be satisfied—

- (a) that that further time is needed to ascertain whether the person on bail should be charged with the offence in relation to which bail was granted under section 28A; or
- (b) that further investigation is required for any matter in connection with the offence in relation to which bail was granted under section 28A.

(7) Before determining whether the bail end period of a person should be extended in accordance with subsection (4), the police officer considering the extension of the bail end period of the person must—

- (a) inform the legal representative of the person in respect of whom the determination is being made that the extension of the person's bail period is being considered; and
- (b) consider any representation made on behalf of the person in respect of whom the determination is being made by the legal representative under paragraph (a).

(8) Further to subsection (7) a police officer extending the bail period of a person in accordance with subsection (4) must inform the legal representative under subsection (7)(a) of the determination made by such police officer.

Bail period and extension by court

28E. (1) If the bail period of a person is extended in accordance with section 28D and a further extension of the bail period of such person is required a police officer of the rank of inspector or above may cause an application to be made to the magistrate's court to further extend the bail period of such person.

(2) Before granting an application made pursuant to subsection (1) the magistrate's court must be satisfied—

- (a)* that the bail end date of the person pursuant to section 28D(4) in respect of whom the application is made has not expired;
- (b)* that the release of the person on bail is necessary and proportionate in all the circumstances; and
- (c)* that the investigation in relation to the offence in respect of which bail was granted under section 28A is being conducted diligently and expeditiously.

(3) In addition to being satisfied in accordance with subsection (2) a magistrate's court approving the extension of a person's bail period in accordance with an application made pursuant to subsection (1) must be satisfied—

- (a)* that that further time is needed to ascertain whether the person on bail should be charged with the offence in relation to which bail was granted under section 28A; or
- (b)* that further investigation is required for any matter in connection with the offence in relation to which bail was granted under section 28A.

(4) Subject to subsection (2) and (3) the bail period of a person may be extended at the discretion of a magistrate's court to end at the end of the period of up to but not exceeding 12 months beginning with the person's bail start date.

Re-arrest

28F. Nothing in section 28A or 28B prevents the re-arrest without a warrant of a person released under section 28A if, since the person's release, new evidence has come to light or an examination or analysis of existing evidence has been made which could not reasonably have been made before the person's release.

Variation of bail conditions by police officer

28G. (1) A relevant officer at a police station at which a person released on bail under section 28A(1) is required to attend, may subject to subsection (2), at the request of the person, vary the conditions of the person's bail.

(2) A request for the variation of the conditions of bail must be based on information that was not available to the relevant officer to whom the request for the variation of bail is made at the time when the conditions of bail were imposed or subsequently when a request for variation of bail preceding the request for variation being considered, was made.

(3) Where conditions of bail granted to a person under section 28A(1) are varied under subsection (1)—

- (a)* paragraphs *(a)* to *(e)* of section 28A(4) apply;

- (b) requirements imposed by the conditions as so varied must be requirements that appear to the relevant officer varying the conditions to be necessary for any of the purposes mentioned in paragraphs (a) to (d) of section 28A(5); and
 - (c) the relevant officer who varies the conditions must give the person notice in writing of the variation.
- (4) Power under subsection (1) to vary conditions is, subject to subsection (3)(a) and (b), power—
- (a) to vary or rescind any of the conditions; and
 - (b) to impose further conditions.
- (5) In this section “relevant officer”, in relation to a designated detention centre, means a custody officer but, in relation to any other police station—
- (a) means a police officer who is not involved in the investigation of the offence for which the person making the request under subsection (1) was under arrest when granted bail under section 28A(1), if such a police officer is readily available; and
 - (b) if no such police officer in accordance with paragraph (a) is readily available—
 - (i) means a police officer other than the one who granted bail to the person, if such a police officer is readily available; and
 - (ii) if no such police officer is readily available, means the police officer who granted bail.

Variation of bail conditions by court

28H. (1) Where a person released on bail under section 28A(1) is on bail subject to conditions, a magistrates' court may, on an application by or on behalf of the person, vary the conditions if—

- (a) the conditions have been varied under section 28G(1) since being imposed under section 28A(5);
- (b) a request for variation under section 28G(1) of the conditions has been made and refused; or
- (c) a request for variation under section 28G(1) of the conditions has been made and the period of 48 hours beginning with the day when the request was made has expired without the request having been withdrawn or the conditions having been varied in response to the request.

(2) In proceedings on an application for a variation under subsection (1), a ground may not be relied upon unless—

- (a) in a case falling within subsection (1)(a), the ground was relied upon in the request in response to which the conditions were varied under section 28G(1); or
- (b) in a case falling within paragraph (b) or (c) of subsection (1), the ground was relied upon in the request mentioned in that paragraph, but this does not prevent the court, when deciding the application, from considering different grounds arising out of a change in circumstances that has occurred since the making of the application.

(3) Where conditions of bail granted to a person under section 28A(1) are varied under subsection (1)—

- (a) paragraphs (a) to (d) of section 28A(4) apply;

- (b) requirements imposed by the conditions as so varied must be requirements that appear to the court varying the conditions to be necessary for any of the purposes mentioned in paragraphs (a) to (d) of section 28A(5); and
 - (c) that bail shall not lapse but shall continue subject to the conditions as so varied.
- (4) Power under subsection (1) to vary conditions is, subject to subsection (3)(a) and (b), power—
- (a) to vary or rescind any of the conditions; and
 - (b) to impose further conditions.

Failure to answer to bail or breach of conditions

28I. (1) A police officer may arrest without a warrant a person who has been released on bail under section 28A subject to a requirement to attend a specified police station at a specified time, but fails to attend the specified police station at the specified time.

(2) A person who has been released on bail under section 28A may be arrested without a warrant by a police officer if the police officer has reasonable grounds for suspecting that—

- (a) the person has broken any of the conditions of bail; or
- (b) the person is likely to break any condition of bail.

(3) A person arrested pursuant to this section must be taken to a police station, which may be the specified police station or any other police station, as soon as practicable after the arrest.

(4) In this section (1), “specified police station” means a police station specified in a notice under section 28B(1) or (4).

(5) For the purpose of—

- (a) section 28, subject to the obligation in subsection (3), and
- (b) section 29,

an arrest under this section is to be treated as an arrest for an offence.”.

Amendment of section 31 - limitations on police detention

6. Section 31(7) of the principal Ordinance is amended by repealing the words “answer to bail” and substituting the words “answer to bail granted pursuant to section 28A or pursuant to this Part”.

Amendment of section 37 - limits on periods of detention without charge

7. Section 37(2) of the principal Ordinance is amended by inserting after paragraph (b) the following paragraph—

“(bb) in the case of a person who attends a police station to answer to bail granted under section 28A, the time when the person arrives at the police station; or”.

EXPLANATORY NOTE

(This note is not part of the Ordinance)

The purpose of this Ordinance is to permit the imposition of pre-charge bail after the arrest of a person.

Clause 1 of the Bill provides the citation and commencement of the Bill and provides the interpretation of the term “the principal Ordinance” which is used in the Bill.

Clause 2 of the Bill amends section 17 of the Ordinance so that the power of a police officer to enter and search premises applies in circumstances where a person is released on bail in accordance with section 28A.

Clause 3 of the Bill inserts section 27A into the Ordinance so that wherever a person may be placed on bail before the person is charged with an offence, conditions may be attached to such bail.

Clause 4 of the Bill amends section 28 of the Ordinance so that the requirement of a person to be taken to a designated detention centre does not extend to a person released on bail in accordance with section 28A.

Clause 5 of the Bill inserts clauses 28A to 28I into the Ordinance as follows—

(a) Sub-clause 28A permits a police officer, in respect of a person suspected of committing an offence, to release the person, while an investigation is being conducted in respect of the offence and before the person is charged in respect of the offence, without bail or with bail if the police officer, in the discretion of the police officer, is satisfied that it is necessary and proportionate to release the person on bail and that the release on bail is authorised by another police officer of the rank of sergeant or above. This clause makes provision for the release of a person on bail to be made subject to conditions which must satisfy criteria specified in the Bill.

(b) Sub-clause 28B provides that a person released on bail must be provided with notice as specified in the Bill.

(c) Sub-clause 28C provides the meaning of certain terms used in section 28D, 28E and 28F.

(d) Sub-clause 28D makes provision, subject to specified conditions, for the bail period of a person to be extended by a police officer of the rank of inspector or above.

(e) Sub-clause 28E makes provision for the extension of the bail period of a person by a magistrate’s court. Before granting such an application, the magistrate’s court must be satisfied of certain conditions specified in the Bill.

(f) Sub-clause 28F provides that a person may be re-arrested if new evidence in relation to the offence in respect of which the person was released on bail comes to light.

(g) Sub-clause 28H makes provision for the conditions of a person bail to be varied by a police officer.

(h) Sub-clause 28H makes provision for the conditions of a person’s bail to be varied by the magistrate’s court.

(i) Sub-clause 28I makes provision for the arrest of a person who fails to answer bail or who breaches any of the conditions of the person’s bail.

Clause 6 amends section 31 of the Ordinance so that the detention of a person arrested on bail applies in respect of a person released on bail pursuant to section 28A.

Clause 7 amends section 37 of the Ordinance so that meaning of the term “relevant time” in respect of a period of detention applies in respect of a person granted bail pursuant to section 28A.

