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06 MAY 2019

Kate McIntyre  
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Our ref: OIA 74676

Dear Ms McIntyre

**Official Information Act request: Bail Amendment Act 2013**

Thank you for your email of 7 April 2019 requesting, under the Official Information Act 1982 (the Act), “all advice, inquiries, reports, and other documentation about the effects of the Bail Amendment Act 2013. If all of these documents are not immediately available, please provide the title and date of completion of every document produced or commissioned by the MOJ which addresses the effects of the Bail Amendment Act 2013.”

We have identified two documents that fall within scope of your request. The aide memoire entitled *Impact of Bail Amendment Act 2013*, dated 28 February 2018, is appended to this letter. The Regulatory Impact Statement entitled *Regulatory Impact Statement – Bail Amendment Bill* has been withheld in full under section 18(d) as the information requested is or will soon be publicly available. This document can be found online at [www.justice.govt.nz/assets/Documents/Publications/Regulatory-Impact-Statement-Review-of-aspects-of-the-bail-system.pdf](http://www.justice.govt.nz/assets/Documents/Publications/Regulatory-Impact-Statement-Review-of-aspects-of-the-bail-system.pdf).

If you require any further information, please contact Julia Goode, Acting Team Leader Media and External Relations on 021 636 416, or email [media@justice.govt.nz](mailto:media@justice.govt.nz). If you are not satisfied with my response to your request, you have the right to complain to the Ombudsman under section 28(3) of the Act. The Ombudsman may be contacted by email at [info@ombudsman.parliament.nz](mailto:info@ombudsman.parliament.nz).

Yours sincerely

Anton Youngman  
General Manager, Sector Insights



## Purpose

1. This note provides background on the Bail Amendment Act 2013 and analyses the subsequent changes in the use of custodial remand. It shows that the Act increased remand rates for a wide range of offences well beyond those specified in the legislation.

## The Bail Amendment Act 2013

2. The Act extended the range of offences covered by a reverse burden of proof to include:
  - Defendants charged with Class A drug offences
  - Defendants charged with murder
  - Defendants charged with selected serious violent and sex offences
3. In addition, the strong presumption of bail for defendants aged 17-19 was removed. Defendants in this age group are now treated as adults when the bail/remand decision is made.
4. At the time the changes were made, we did not anticipate that the Act would have a significant impact. The Act defined specific offence and offender groups which meant that it was possible to calculate the impact of the changes at 50 remand beds, representing about 250 additional people remanded.

## How did the use of remand change?

5. It is difficult in retrospect to isolate the specific impact of the 2013 amendments because the criteria for a decision to release on bail or remand in custody include considerations around whether the defendant will fail to appear, interfere with witnesses or commit further offences. These criteria may also affect the decision, independently of the current offence.
6. The Act came into force in December 2013. Remand rates rose across all offence categories – not just those included in the amendments - from very soon afterwards. Our projections did not anticipate this.
7. The full list of offence categories and the change in the remand rate between calendar years 2013 and 2016 are given in the table below. Percentages for homicide and miscellaneous offences are excluded due to the small numbers in these categories.

Table 1. Remand rates by offence type 2013-2016

Offence type	2013	2016	Increase in remand rate over 2013	Absolute change in number remanded
Robbery	35.3%	48.7%	13.4%	119
Weapons	13.4%	25.2%	11.8%	262
Drugs	14.1%	25.5%	11.4%	411
Public Order	7.7%	16.6%	8.9%	11
Against Justice	16.9%	25.3%	8.4%	1,556
Theft	12.7%	20.6%	7.9%	487
Abduction	21.3%	28.3%	7.0%	257
Property Damage	11.2%	18.0%	6.8%	132
Fraud	5.7%	11.9%	6.3%	195
Injurious Acts	11.6%	16.9%	5.2%	646
Burglary	22.6%	27.2%	4.7%	-12
Sexual	29.6%	30.8%	1.2%	-62
Dangerous Acts	1.9%	3.0%	1.2%	59
Traffic	1.3%	2.2%	0.9%	129
Homicide				-6
Miscellaneous				-2
<b>Total offences</b>	<b>9.5%</b>	<b>14.9%</b>	<b>5.4%</b>	<b>4,182</b>

Family violence offences can appear under Abduction (which is where threats are recorded) and Against Justice (for Breach of Protection Order), both of which show reasonable increases.

Dangerous Acts (which are principally reckless and careless driving offences) and Traffic show small percentage increases but these small increases are on larger volumes of cases, leading to moderate increases in absolute numbers.

### Analysis of changes

8. The data refers to offence categories rather than specific offences. Of the offences targeted in the legislation, there was a substantial increase in the use of remand for drugs offences. The increases for injurious acts and sexual offending were not large. This suggests that these offences were already subject to a restricted use of bail, and the Act had less effect. However, there are increases across the full range of offending.
9. The greatest increase in the remand rate was in robbery offences (35.3% in 2013 to 48.7% in 2016), with weapons offences the next greatest (13.4% to 25.2%). Other significant increases occurred in the offence categories of drugs, abduction, public order, property damage, offences against justice, theft and fraud. There was little change in the use of remand for sex offences.
10. For Class A drug offences considered separately, the remand rate rose from 23.0% in 2013 to 35.9% in 2016, involving 317 extra remands. This is over three-quarters of all additional remands associated with drug offences.
11. The absolute change in numbers remanded is a consequence of changes in both the remand rate and the number of people. The observed fall in numbers remanded for burglary and sexual offences reflects a fall in the numbers of those offences between 2013 and 2016, even as the rates of remand increased.