

LEGAL AID, SENTENCING AND PUNISHMENT OF OFFENDERS ACT 2012

EXPLANATORY NOTES

COMMENTARY

Part 3: Sentencing and punishment of offenders

Chapter 4: Release on licence etc

Calculation of days to be served

Section 109: Crediting of periods of remand on bail

540. **Section 109** amends section 240A of the 1991 Act which gives the court power to direct that time spent remanded on bail subject to electronic monitoring (“tagged bail”) counts towards any subsequent sentence imposed, provided that that sentence is imposed for the same offence for which the defendant was remanded or a related offence. Two days successfully completed on tagged bail count as one day of the sentence. The new provisions set out how the time to be credited has to be calculated.
541. *Subsection (3)* inserts new subsections (3) to (3B) into section 240A. These set out the stages of the calculation. Under Step 1 the first day is counted even if the electronic monitor is not put in place until late that day. However, the last day is not counted if the offender spends the last part of that day in custody: that day will count towards the sentence served.
542. Step 2 prevents credit for tagged bail counting towards a subsequent sentence where during such time on bail the offender was also subject to an electronically monitored curfew requirement in connection with any other sentence (which includes being released on HDC) or temporarily released from prison in relation to another sentence.
543. Under Step 3 days where the offender breached the conditions of the release on bail are not to be counted.
544. Step 4 provides that each day spent on tagged bail effectively counts as half a day against the sentence. If such a calculation results in a number of days that include a half day, that half day can be counted as a whole day under Step 5.
545. New subsection (3A) prevents the same remand time counting several times against two or more sentences (whether or not they are to be served consecutively or concurrently).
546. New subsection (3B) prevents remand time shortening any recall under section 255B where the maximum length of the recall is 28 days (that is, where a prisoner receives the type of ‘fixed term recall’ introduced by the 2008 Act which provides for automatic release at the end of that 28 day period).