

**2024-07-30**

**Bill as amended**

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This Bill would revise the law relating to the provision of bail in or in connection with criminal proceedings and would provide for related matters.

*Arrangement of Sections*

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**SCHEDULE  
OFFENCES**

## **BARBADOS**

A Bill entitled

An Act to revise the law relating to the provision of bail in or in connection with criminal proceedings and to provide for related matters.

ENACTED by the Parliament of Barbados in accordance with the provisions of section 49 of the *Constitution* as follows:

PART I

PRELIMINARY

**Short title**

1. This Act may be cited as the *Bail Act, 2024*.

**Interpretation**

- 2.(1) In this Act,

“bail” means

- (a) bail grantable in or in connection with proceedings for an offence to a person who is accused or convicted of the offence;
- (b) bail grantable in connection with an offence to a person who is under arrest for the offence or for whose arrest for the offence a warrant, endorsed for bail is issued;
- (c) bail grantable under the law, including common law, for the time being in force;

“child” means a person under the age of 18 years;

“conviction” includes

- (a) a finding of guilt;
- (b) a finding that a person is not guilty by reason of insanity;
- (c) a finding that a person is guilty but is suffering from diminished responsibility;
- (d) a finding under section 57(1) of the *Magistrate's Courts Act, Cap. 116A* that the person in question did the act or made the omission charged; and

(e) a conviction of an offence for which an order is made placing the offender on probation or discharging him absolutely or conditionally, and “convicted” shall be construed accordingly;

“court” means a Judge of the High Court or a magistrate and, in the case of a specified court, includes a Judge or a magistrate having powers to act in connection with proceedings before that court;

“defendant” means a person charged with or convicted of an offence and includes a person who is a party to an appeal;

“lower court” means

- (a) the magistrate’s court where there is an appeal from that court to the High Court; and
- (b) the magistrate’s court or the High Court where there is an appeal from any such court to the Court of Appeal;

“Magistrate’s Courts Rules” means rules made under section 268 of the *Magistrate’s Courts Act, Cap. 116A*;

“offence” includes an alleged offence;

“surrender to custody” means

- (a) in relation to a person released on bail, surrendering into the custody of the court or of the police officer, according to the requirements of the grant of bail, at the time and place for the time being appointed for the person to do so; or
- (b) in relation to an enactment which refers to the person bailed appearing before the court, the surrendering of that person before the court;

“vary” in relation to bail, means imposing further conditions after bail is granted, or varying or rescinding conditions.

(2) Where an enactment, whenever passed, that relates to bail in criminal proceedings refers to the person being bailed appearing before a court, it is to be

construed, unless the context otherwise requires, as referring to the person surrendering into the custody of the court.

**Application of Act**

3. This Act applies
- (a) to an offence committed in Barbados or elsewhere; and
  - (b) to an extraditable offence under the *Extradition Act*, Cap. 189.

PART II

RIGHT TO BAIL

**Right to bail**

- 4.(1) Subject to this Act, a defendant shall be entitled to bail.
- (2) Where bail is granted, the conditions of bail shall be reasonable.

**Police bail**

5. Where a person is taken into custody for an offence without a warrant, a police officer not below the rank of inspector or a police officer in charge of the police station to which the person is brought shall, if it is not practicable to bring the person before a magistrate within 24 hours after being taken into custody, inquire into the case, and,

- (a) if the offence is not one punishable with imprisonment, grant the person bail; and
- (b) if the offence is one punishable with imprisonment, may, unless the offence appears to be a serious one, grant the person bail

with or without sureties subject to a duty to appear before a magistrate at such time and place as the officer appoints.



**Circumstances in which bail may be refused**

6.(1) Where a defendant is accused or convicted of an offence that is punishable by imprisonment, the court may refuse an application for bail if the interests of justice so require.

(2) In the interests of justice, the court shall refuse an application for bail where one or more of the following grounds are established:

- (a) where there is the likelihood that the defendant, if granted bail, will endanger the safety of the public or any particular person or will commit an offence referred to in Part I of the *Schedule*;
- (b) where there is the likelihood that the defendant, if granted bail, will attempt to evade trial;
- (c) where there is the likelihood that the defendant, if granted bail, will attempt to influence or intimidate witnesses or to conceal or destroy evidence;
- (d) where there is the likelihood that the defendant, if granted bail, will undermine or jeopardize the objectives or the proper functioning of the criminal justice system, including the bail system; or
- (e) where in exceptional circumstances there is the likelihood that the release of the defendant will not be in the interest of public order or public safety or public security.

(3) In considering whether the ground in subsection (2)(a) has been established, the court may, where applicable, take into account the following factors:

- (a) the degree of violence towards others implicit in the charge against the defendant;
- (b) any threat of violence which the defendant may have made to any person;

- (c) any resentment the defendant is alleged to harbour against any person;
  - (d) any disposition to violence on the part of the defendant, as is evident from the defendant's past conduct;
  - (e) any disposition of the defendant to commit an offence referred to in Part I of the *Schedule*, as is evident from the defendant's past conduct;
  - (f) the prevalence of a particular type of offence;
  - (g) any evidence that the defendant previously committed an offence referred to in Part I of the *Schedule* while on bail; or
  - (h) any other factor which in the opinion of the court should be taken into account.
- (4) In considering whether the ground in subsection (2)(b) has been established, the court may, where applicable, take into account the following factors:
- (a) the assets held by the defendant and where such assets are held;
  - (b) the means of, and travel documents held by, the defendant, which may enable the defendant to leave the country;
  - (c) the extent, if any, to which the defendant can afford to forfeit the amount of bail which may be set;
  - (d) the question whether the extradition of the defendant could readily be effected should the defendant flee the jurisdiction in an attempt to evade trial;
  - (e) the nature and gravity of the charge on which the defendant is to be tried;
  - (f) whether the strength of the case against the defendant may induce the defendant to attempt to evade trial;
  - (g) the nature and gravity of the punishment which is likely to be imposed should the defendant be convicted of the charges;

- (h) the binding effect and enforceability of bail conditions which may be imposed and the ease with which such conditions could be breached;  
or
  - (i) any other factor which in the opinion of the court should be taken into account.
- (5) In considering whether the ground in subsection (2)(c) has been established, the court may, where applicable, take into account the following factors:
- (a) the fact that the defendant is familiar with the identity of witnesses and with the evidence which they may give at the trial;
  - (b) whether the witnesses have already made statements and agreed to testify;
  - (c) whether the investigation against the defendant has already been completed;
  - (d) the relationship of the defendant with the various witnesses and the extent to which they could be influenced or intimidated;
  - (e) how effective and enforceable bail conditions prohibiting communication between the defendant and witnesses are likely to be;
  - (f) whether the defendant has access to evidentiary material which is to be presented at the trial;
  - (g) the ease with which evidentiary material could be concealed or destroyed; or
  - (h) any other factor which in the opinion of the court should be taken into account.

(6) In considering whether the ground in subsection (2)(d) has been established, the court may, where applicable, take into account the following factors:

- (a) the fact that the defendant, knowing it to be false, supplied false information at the time of arrest or during the bail proceedings;
- (b) whether the defendant is in custody on another charge;
- (c) any previous failure on the part of the defendant to comply with bail conditions or any indication that the defendant will not comply with any bail conditions; or
- (d) any other factor which in the opinion of the court should be taken into account.

(7) In considering whether the ground in subsection (2)(e) has been established, the court may, where applicable, take into account the following:

- (a) whether the nature of the offence or the circumstances under which the offence was committed is likely to induce a sense of shock or outrage in the community;
- (b) whether the shock or outrage of the community might lead to public disorder if the defendant is released;
- (c) whether the safety of the defendant might be jeopardized by the defendant's release;
- (d) whether the sense of peace and security among members of the public will be undermined or jeopardized by the release of the defendant;
- (e) whether the release of the defendant will undermine or jeopardize the public confidence in the criminal justice system; or
- (f) any other factor which in the opinion of the court should be taken into account.

(8) In considering subsection (2) the court shall decide the matter by weighing the interests of justice against the right of the defendant to personal freedom and

in particular the prejudice that the defendant is likely to suffer if detained in custody, taking into account, where applicable, the following factors:

- (a) the period for which the defendant has already been in custody since arrest;
- (b) the probable period of detention until the disposal or conclusion of the trial if the defendant is not released on bail;
- (c) the reason for any delay in the disposal or conclusion of the trial and any fault on the part of the defendant with regard to such delay;
- (d) any financial loss which the defendant may suffer owing to the defendant's detention;
- (e) any impediment to the preparation of the defendant's defence or any delay in obtaining legal representation which may be brought about by the detention of the defendant;
- (f) the state of health of the defendant; or
- (g) any other factor which in the opinion of the court should be taken into account.

(9) Where the prosecution does not oppose the granting of bail, the court has the duty, imposed by subsection (8), to weigh the personal interests of the defendant against the interests of justice.

(10) Notwithstanding any provision of this Act, where a defendant is charged with an offence referred to in Part I of the *Schedule*, the court shall order that the defendant be detained in custody until the defendant is dealt with in accordance with law, unless the defendant, having been given a reasonable opportunity to do so, adduces evidence which satisfies the court that exceptional circumstances exist which in the interests of justice permit the defendant's release.

(11) Notwithstanding any provision of this Act, where a defendant is charged with an offence referred to in Part II of the *Schedule*, the court shall order that the defendant be detained in custody until the defendant is dealt with in accordance with law, unless the defendant, having been given a reasonable

opportunity to do so, adduces evidence which satisfies the court that the interests of justice permit the defendant's release.

(12) The court may make the release of a defendant on bail subject to conditions which, in the court's opinion, are in the interests of justice.

(13) In bail proceedings the defendant, or the attorney-at-law for the defendant, shall inform the court whether

- (a) the defendant has previously been convicted of any offence and there are any charges pending against the defendant and whether the defendant has been released on bail in respect of those charges; and
- (b) where the attorney-at-law on behalf of the defendant submits the information referred to in paragraph (a), whether in writing or orally, the defendant shall be required by the court to declare whether the defendant confirms such information or not.

(14) The record of bail proceedings, except the information in subsection (13)(a), shall form part of the record of the trial of the defendant following upon such bail proceedings.

(15) Where the defendant elects to testify during the course of bail proceedings the court shall inform the defendant that anything the defendant says, may be used at the defendant's trial and such evidence becomes admissible in any subsequent proceedings.

(16) A defendant who wilfully

- (a) fails or refuses to comply with the provisions of subsection (13)(a); or
- (b) furnishes the court with false information required in terms of subsection (13)(b),

shall be guilty of an offence and liable on summary conviction to a fine of \$5 000 or to imprisonment for 2 years.

(17) The court may grant a defendant bail subject to conditions, which, in the court's opinion, are in the interests of justice.

**Court to obtain evidence in bail proceedings**

7. In bail proceedings the court
- (a) may, in respect of matters that are not in dispute between the defence and the prosecution, acquire in an informal manner the information that is needed for its decision or order regarding bail;
  - (b) may, in respect of matters that are in dispute between the defence and the prosecution, require of the prosecution or the defence, as the case may be, that evidence be adduced; and
  - (c) shall, where the prosecution does not oppose bail in respect of matters referred to in Part II of the *Schedule*, require of the prosecution to place on record the reasons for not opposing the bail application.

PART III

BAIL PROCEDURE

**Record of decision as to bail**

- 8.(1) Subject to subsection (2), where
- (a) a court or police officer grants bail to a defendant;
  - (b) a court denies bail to a defendant;
  - (c) a court or police officer appoints a time or place, or a court or police officer appoints a different time or place, for a person granted bail to surrender to custody;
  - (d) a court varies any conditions of bail or imposes conditions in respect of bail,

that court or police officer shall make a record of the decision in the prescribed manner containing the prescribed particulars and, shall if requested to do so by

the defendant, give the defendant a copy of the record of the decision as soon as practicable after the record is made.

(2) Where bail is granted by endorsing a warrant of arrest for bail, the police officer who releases on bail the person arrested shall make the record required by subsection (1) instead of the Judge or magistrate who issued the warrant.

(3) In this section "prescribed" means, in relation to the decision of

(a) a court, prescribed by rules made under this Act;

(b) a police officer, prescribed by the direction of the Commissioner of Police.

### **Reasons relating to bail**

**9.(1)** A magistrate's court shall, in order to enable the defendant or the police, as the case may be, to make an application respecting bail to the High Court, give reasons for

(a) denying bail;

(b) imposing or varying conditions relating to the grant of bail;

(c) granting bail over an objection to bail by the prosecution where the defendant is charged with an offence punishable by a term of imprisonment of 5 years or more.

(2) A court referred to in subsection (1) shall give reasons for its decision, shall include a note of those reasons in the record of the decision, and shall give a copy of that note to the police and the defendant.

### **Right to apply to the High Court for bail**

**10.(1)** Where a magistrate denies bail to an unrepresented defendant, the magistrate shall,

(a) if committing the defendant for trial to the High Court;

(b) if issuing a certificate under subsection (2); or



(c) in any other case,

inform the defendant of the right to apply to the High Court to be granted bail.

(2) Where in criminal proceedings, after hearing full argument on an application for bail from the defendant, a magistrate's court remands the defendant in custody under section 18, 32, 45 or 57 of the *Magistrate's Courts Act*, Cap. 116A, the court shall issue a certificate in the prescribed form that it has heard full argument on the application before it refused the application, if

- (a) the court has not previously heard such argument on that application from the defendant; or
- (b) the court has previously heard such argument on the application from the defendant but it is satisfied that there has been a change in the defendant's circumstances or that new considerations have been placed before it.

(3) Where the court issues a certificate under subsection (2)(b), it shall state in the certificate the nature of the change of the circumstances or the new considerations which caused it to hear a further fully argued bail application.

(4) Where the court issues a certificate under subsection (2), it shall cause the defendant to be given a copy of the certificate.

(5) In this section "prescribed" means prescribed by rules made under this Act.

#### **Bail in the case of persons charged with an offence set out in Schedule**

**11.(1)** An application for bail by a person who is charged with an offence mentioned in Part I or Part II of the *Schedule* shall be heard by the Chief Justice or a Judge of the High Court assigned by the Chief Justice.

(2) An application for bail by a person referred to in subsection (1) for an offence referred to in that subsection shall not be heard by the High Court unless

- (a) a period of 72 hours has expired after the application for bail is made to the Court; and

- (b) the Court is satisfied that notice of the application was served on the prosecution.
- (3) Where bail is granted by the High Court to a person in the circumstances mentioned in subsection (2), the Chief Justice or Judge, as the case may be, shall, at the time of making the decision,
  - (a) give reasons in writing for the decision; and
  - (b) give a copy of the reasons for the decision to the defendant and the prosecution.
- (4) Where bail is granted by the High Court to a defendant under this section, there shall be a right of appeal by the prosecution to the Court of Appeal against the decision of the Court.
- (5) An appeal to the Court of Appeal under subsection (4) shall be heard by the Chief Justice or by a Justice of Appeal assigned by the Chief Justice as is appropriate in the particular circumstances and the decision of such judge shall be final.

**Powers of the High Court in relation to bail**

- 12.(1)** Notwithstanding any power of the High Court to admit or direct the admission of persons to bail,
- (a) the High Court may grant bail where a person has been committed in custody to the High Court for trial or sentence; or
  - (b) the High Court may grant bail or vary the conditions of bail where the magistrate's court denies bail or imposes conditions in granting bail.
- (2) Where the High Court grants bail to a defendant under subsection (1), it may direct the defendant to appear at a time and place which the magistrate's court could have directed, and the recognizance of any surety shall be conditioned accordingly.
- (3) Where the High Court denies bail to a defendant under subsection (1), and the defendant is not then in custody, the court shall issue a warrant for the arrest

of the defendant, and the defendant shall be brought before a magistrate's court and shall be remanded in custody.

#### PART IV

#### CONDITIONS OF BAIL

##### **General provisions relating to bail**

- 13.(1)** A defendant granted bail shall surrender to custody.
- (2) A defendant may be required to give security for surrender to custody, or the security may be given on the defendant's behalf, if it appears that the defendant is unlikely to remain in Barbados until the time appointed for surrender to custody.
- (3) A court may require any defendant applying for bail to
- (a) provide, as a condition for bail before release, a surety to secure surrender to custody;
  - (b) surrender the defendant's passport to the court;
  - (c) inform the court if the defendant intends to leave the jurisdiction;
  - (d) report to any police station at specified times.
- (4) A defendant may be ordered by a court to comply with any requirement that is in the opinion of the court necessary to secure that the defendant
- (a) surrenders to custody;
  - (b) does not commit an offence while on bail;
  - (c) does not interfere with witnesses or otherwise obstruct the course of justice whether in relation to himself or any other person; or

(d) is available for the purpose of enabling inquiries or a report of any medical examination to be made to assist the court in dealing with him for the offence.

(5) If a parent or guardian of a child consents to be a surety for the child for the purposes of this subsection, the parent or guardian may be required to ensure that the child complies with any requirement imposed on the child by virtue of subsection (4), but

(a) no requirement shall be imposed on the parent or the guardian of a child by virtue of this subsection where it appears that the child will attain the age of 18 years before the time to be appointed for the child to surrender to custody; and

(b) the parent or guardian shall not be required to secure compliance with any requirement to which the parent's or guardian's consent does not extend and shall not, in respect of those requirements to which consent does extend, be bound in a sum greater than \$500.

(6) Any court before which a charge is pending in respect of which bail has been granted, whether subject to conditions or unconditionally, may, at any stage, whether the bail was granted by that court or any other court, on application by the prosecutor, or by or on behalf of the defendant, add any further condition of bail

(a) with regard to the reporting in person by the defendant at any specified time and place to any specified person or authority;

(b) with regard to any place to which the defendant is forbidden to go;

(c) with regard to the prohibition of or control over communication by the defendant with witnesses for the prosecution;

(d) with regard to the place at which any document may be served on him under this Act;

- (e) which, in the opinion of the court, will ensure that the proper administration of justice is not placed in jeopardy by the release of the defendant;
- (f) which provides that the defendant shall be placed under the supervision of a probation officer.

(7) This section is subject to section 57(2) of the *Magistrate's Courts Act*, Cap. 116A.

**Exceptions to section 13 conditions**

**14.** Where the defendant is granted bail, the conditions mentioned in section 13 shall not be imposed on him

- (a) on an application for bail; or
- (b) on an application to vary the conditions of bail

unless the court considers that it is necessary to do so for the purpose of preventing the occurrence of any of the events mentioned in section 13(4) or to enable inquiries or a report to be made into the defendant's physical or mental condition.

**Bail with sureties**

**15.(1)** This section applies where a person is granted bail on condition that he provides a surety.

(2) In considering the suitability of a proposed surety, the court shall have regard amongst other things to

- (a) the surety's financial resources;
- (b) the surety's character and any previous convictions of the surety; and
- (c) the surety's proximity, whether in point of kinship, place of residence or otherwise to the defendant.

- (3) Where a court grants bail to a defendant under subsection (1), but
- (a) is unable to release the defendant because no surety or suitable surety is available, the court may fix the amount in which the surety is to be bound; and subsections (4), (5) and (6) shall apply for the purpose of enabling the recognizance of the surety to be entered into subsequently; or
  - (b) has committed the defendant to custody in default of finding a surety, the court may, on application by or on behalf of the person committed and after hearing fresh evidence,
    - (i) reduce the amount in which it is proposed that any surety should be bound;
    - (ii) dispense with any sureties; or
    - (iii) otherwise deal with the case as the court thinks fit.
- (4) A recognizance of a surety under subsection (2) may be entered into before such persons or descriptions of persons as the court may specify or, if it makes no such order, before any of the following persons:
- (a) where the decision was taken by a magistrate, before the magistrate or a police officer who is either of the rank of inspector or above or is in charge of a police station or if the Magistrate's Courts Rules so provide, by a person of such other description as is specified in the rules;
  - (b) where the decision is taken by the High Court, before the Registrar or such other officer as may be specified by rules made under this Act.
- (5) Rules made under this Act may prescribe
- (a) the manner in which a recognizance is to be entered into;
  - (b) the persons by whom a recognizance may be enforced; and
  - (c) the manner in which the recognizance may be enforced.

(6) Where a surety seeks to enter into a recognizance before any person in accordance with subsection (4) but that person declines to take the surety's recognizance because the person is not satisfied of the surety's suitability, the surety may apply to

(a) the court that fixed the amount of the recognizance in which the surety was to be bound; or

(b) a magistrate for the district in which the surety resides

for that court or magistrate to take the recognizance; and that court or magistrate shall, if satisfied of the surety's suitability, take the recognizance.

(7) Where, in pursuance of subsection (4) or (5), a recognizance is entered into otherwise than before the court that fixed the amount of the recognizance, the same consequences shall follow as if it had been entered into before that court.

#### **Failure by defendant to observe condition of bail**

**16.(1)** If a defendant is released on bail subject to any condition imposed under section 6 or 13, including any amendment of a condition of bail, and the prosecutor applies to the court before which the charge with regard to which the defendant has been released on bail is pending, to lead evidence to prove that the defendant has failed to comply with such condition, the court shall, if the defendant is present and denies that the defendant failed to comply with such condition or that failure to comply with such condition was due to fault on the defendant's part, proceed to hear such evidence as the prosecutor and the defendant may place before it.

(2) If the defendant is not present when the prosecutor applies to the court under subsection (1), the court may issue a warrant for the arrest of the defendant, and shall, when the defendant appears before the court and denies that the defendant failed to comply with the condition in question or that failure to comply with such condition was due to fault on the defendant's part, proceed to hear such evidence as the prosecutor and the defendant may place before it.

(3) If the defendant admits that the defendant failed to comply with the condition in question or if the court finds that the defendant failed to comply with such condition, the court may, if it finds that the failure by the defendant was due to fault on the defendant's part, revoke the bail and declare the bail money forfeited to the State.

(4) The proceedings and the evidence under this section shall be recorded.

### **Revocation of bail**

**17.** Any court before which a charge is pending in respect of which bail has been granted may, whether the defendant has been released or not, upon information on oath that

- (a) the defendant is about to evade justice or is about to abscond in order to evade justice;
- (b) the defendant has interfered or threatened or attempted to interfere with witnesses;
- (c) the defendant has defeated or attempted to defeat the ends of justice;
- (d) the defendant poses a threat to the safety of the public or of a particular person;
- (e) the defendant has not disclosed or has not correctly disclosed all previous convictions in the bail proceedings or where a true list of previous convictions has come to light after release on bail;
- (f) further evidence has since become available or factors have arisen, including the fact that the defendant has furnished false information in the bail proceedings, which might have affected the decision to grant bail; or
- (g) it is in the interests of justice to do so,

issue a warrant for the arrest of the defendant and make such order as it may deem proper, including an order that the bail be revoked and that the defendant be committed to prison until the conclusion of the relevant criminal proceedings.



**Forfeiture of security**

**18.(1)** Where a person has given security in pursuance of section 13(2) and a court is satisfied that the person failed to surrender to custody, then, unless it appears that the person had reasonable cause for the failure or there are other mitigating circumstances, the court may order the forfeiture of the security.

(2) Where the court orders the forfeiture of a security under subsection (1), the court may declare that the forfeiture extends to such amount less than the full value of the security as it thinks fit to order.

(3) An order under subsection (1) shall, unless previously revoked, take effect at the end of 21 days beginning with the day on which it is made.

(4) A court which has ordered the forfeiture of a security under subsection (1) may, if satisfied on an application made by the defendant or a surety that

(a) the defendant did after all have reasonable cause for failure to surrender to custody; or

(b) there are other mitigating circumstances which should be considered, remit the forfeiture or declare that the forfeiture extends to such amount less than the full value of the security as it thinks fit to order.

(5) An application under subsection (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 prosecution was given reasonable notice of the applicant's intention to make it.

(6) A security that has been ordered to be forfeited by a court under subsection (1) shall, to the extent of the forfeiture,

(a) if it consists of money, be accounted for and paid in the same manner as a fine imposed by that court would be; or

(b) if it does not consist of money, be enforced by the magistrate's court in the manner specified in the order.

(7) Where an order is made under subsection (4) after an order for forfeiture of the security in question has taken effect, any money forfeited shall be paid over to the person who gave the security.

## PART V

### MISCELLANEOUS

#### **Absconding**

**19.(1)** A person who has been released on bail is guilty of an offence if the person

- (a) fails without reasonable cause to surrender to custody; or
- (b) having reasonable cause for not surrendering to custody, fails to surrender to custody at the appointed place as soon after the appointed time as is reasonably practicable.

(2) It shall be for the defendant to adduce evidence that the defendant had reasonable cause for failing to surrender to custody.

(3) A failure to give to a person granted bail a copy of the decision shall not constitute a reasonable cause for the person's failure to surrender to custody.

(4) A person guilty of an offence under subsection (1), is liable on summary conviction to a fine of \$5 000 or to imprisonment for 2 years or to both.

(5) In any proceedings for an offence under subsection (1), a document purporting to be a copy of the part of the prescribed record that relates to the time and place appointed for the person specified in the record to surrender to custody and to be duly certified to be a true copy of that part of the record shall be evidence of the time and place appointed for that person to surrender to custody.

- (6) For the purposes of subsection (5),
- (a) the "prescribed record" means the record of the decision of the court or police officer made in pursuance of section 8;
  - (b) the copy of the prescribed record is duly certified if it is certified by the appropriate officer of the court or, as the case may be, by the police officer who took the decision or a police officer designated for the purpose by the officer in charge of the police station from which the person to whom the record relates was released;
  - (c) the "appropriate officer" means the clerk to the magistrate's court or such other officer as may be authorized by the magistrate for the purpose.

**Arrest for absconding etc.**

**20.(1)** Where a person who has been released on bail and is under a duty to surrender to custody of a court fails to surrender to custody at the time and place appointed to do so, the court may issue a warrant for the person's arrest.

(2) Where a person who has been released on bail fails to attend court at any time after the person has surrendered to the custody of the court and before the court is ready to begin or to resume the hearing of the proceedings, the court may issue a warrant for the person's arrest; but no warrant shall be issued under this subsection if that person is absent in accordance with leave given by the court.

(3) A person who has been released on bail and is under a duty to surrender into the custody of the court may be arrested without warrant by a police officer

- (a) if the police officer has reasonable grounds for believing that that person is not likely to surrender to custody;
- (b) if the police officer has reasonable grounds for believing that that person is likely to break any of the conditions of his bail, or has reasonable grounds for suspecting that that person has broken any of those conditions;

- (c) in a case where that person was released on bail with a surety, if a surety notifies the police in writing that the person is unlikely to surrender to custody and that for that reason the surety wishes to be relieved of the obligations as a surety; or
  - (d) if new evidence justifying a further arrest has come to light since the person's release.
- (4) Where in pursuance of subsection (3)
  - (a) a person is arrested, that person shall be brought as soon as practicable and in any event within 24 hours after arrest, before a magistrate for the district in which the person is arrested;
  - (b) a person is arrested within 24 hours of the time appointed for the person to surrender to custody, the person shall be brought without delay before the court at which the person is to surrender to custody.
- (5) In reckoning any period of 24 hours for the purposes of subsection (4), no account shall be taken of Christmas Day, Good Friday or any Sunday.
- (6) A magistrate before whom a person is brought under subsection (4) may, subject to subsection (7), if of the opinion that that person is not likely to surrender to custody or has broken or is likely to break any condition of bail,
  - (a) remand the person in custody;
  - (b) commit the person to custody; or
  - (c) grant the person bail subject to the same or to different conditions,but if not of that opinion shall grant the person bail subject to the same conditions, if any, as were originally imposed.
- (7) Where the person brought before the magistrate is a child and the magistrate does not grant bail, subsection (6) shall have effect subject to section 21.

### **Bail of children**

**21.(1)** Where the child referred to in section 20(7) is apprehended with or without warrant and cannot be brought forthwith before a court sitting to hear charges against children, any police officer not below the rank of sergeant or the officer in charge of the police station to whom the child is brought shall enquire into the case and may in any case, and

- (a) unless the charge is one for an offence set out in the *Schedule*;
- (b) unless it is necessary in the interest of the child to remove the child from association with any undesirable person; or
- (c) unless the officer has reason to believe that the release of the child would not be in the interests of justice,

shall release such person on a recognizance, with or without sureties for such amount as will, in the opinion of the officer, secure the attendance of the child upon the hearing of the charge.

(2) Where a child, having been apprehended, is not released under subsection (1), the police officer shall cause the child to be detained at a Reformatory and Industrial School until the child can be brought before a court sitting to hear charges against children, unless the officer certifies

- (a) that it is impracticable to do so;
- (b) that the child is of so unruly a character that the child cannot safely be detained; or
- (c) that by reason of the child's state of health or mental condition it is inadvisable to detain the child,

and the certificate shall be produced to the court before which he is brought.

### **Appeal to superior court with regard to bail**

**22.(1)** A defendant who is aggrieved by the refusal of a lower court to admit the defendant to bail or by the imposition by such court of a condition of bail,

including a condition relating to the amount of bail, or an amendment of a condition of bail, may appeal against such refusal or imposition to a superior court.

(2) An appeal from a lower court under subsection (1) lies to the High Court or the Court of Appeal, as the case requires, and in the case of the Court of Appeal may be heard by a single judge that court.

(3) A decision under subsection (2) by the High Court or the Court of Appeal as the case may be shall be final.

(4) An appeal shall not lie in respect of new facts which arise or are discovered after the decision against which the appeal is brought, unless such new facts are first placed before the lower court and such court gives a decision against the defendant on such new facts.

(5) The defendant shall serve a copy of the notice of appeal on the Director of Public Prosecutions and on the magistrate, or on the Registrar in the case of the High Court, and the magistrate or judge, as the case may be, shall forthwith furnish the reasons for the decision to the Registrar.

(6) The judge hearing the appeal shall not set aside the decision against which the appeal is brought, unless such judge is satisfied that the decision was wrong, in which case the judge shall give the decision which in the judge's opinion the lower court should have given.

### **Prosecution right of appeal**

**23.(1)** In proceedings before a magistrate's court in which a person who is charged with an offence punishable by a term of imprisonment of 5 years or more is granted bail, there shall be a right of appeal by the prosecution to a Judge of the High Court against the decision of the magistrate's court to grant bail, if objection to the granting of bail is made by the prosecution before the magistrate's court grants such bail.

- (2) Where the prosecution wishes to exercise the right of appeal set out in subsection (1),
- (a) oral notice of appeal shall be given to the magistrate's court at the conclusion of the proceedings in which such bail has been granted and before the release from custody of the person concerned; and
  - (b) written notice of appeal shall thereafter be served on the magistrate's court and the person concerned within one hour of the conclusion of such proceedings.
- (3) Upon receipt from the prosecution of oral notice of appeal from its decision to grant bail the magistrate's court shall remand in custody the person concerned, pending the hearing of such appeal.
- (4) The hearing of an appeal under subsection (1) against a decision of the magistrate's court to grant bail shall be commenced within 5 days, excluding court holidays and weekends, from the date on which oral notice of appeal is given.
- (5) At the hearing of any appeal by the prosecution under this section such appeal shall be by way of rehearing.

**Payment of bail money by third person**

- 24.(1)** Nothing in this Act or any other enactment shall prevent the payment by any person, other than the defendant, of bail money for the benefit of the defendant.
- (2) Bail money, whether deposited by the defendant or any other person for the benefit of the defendant, shall, notwithstanding that such bail money or any part thereof may have been ceded to any person, be refunded only to the defendant or the depositor, as the case may be.
- (3) No person shall be allowed to deposit for the benefit of a defendant any bail money in terms of this section if the official concerned has reason to believe that such person, at any time before or after depositing such bail money, has been indemnified or will be indemnified by any person in any manner against loss of

such bail money or that he has received or will receive any financial benefit in connection with the deposit of such bail money.

**Rules**

- 25.** The Rules Committee may make rules
- (a) generally for giving effect to this Act; and
  - (b) for prescribing anything that is authorized or required to be prescribed by this Act.

**Savings**

**26.(1)** The *Bail Rules, 2001* (S.I. 2001 No. 23) made under the *Bail Act*, Cap. 122A, shall continue in force as if made under this Act in so far as they are consistent with this Act and shall have effect as if made under this Act, until revoked.

(2) Nothing in this Act affects bail granted under the *Bail Act*, Cap. 122A.

**Transitional**

**27.** Proceedings begun under the *Bail Act*, Cap. 122A before the commencement of this Act shall continue to be dealt with under that Act.

**Repeal of Cap. 122A**

**28.** The *Bail Act*, Cap. 122A is repealed.



**SCHEDULE**

*(Sections 6, 7 and 11)*

**OFFENCES**

**PART I**

*Offences for which bail may be granted if exceptional circumstances are shown*

1. Murder committed in circumstances set out in section 2(2) of the *Offences against the Person Act*, Cap. 141
2. Treason
3. High treason
4. An offence under the *Firearms Act*, Cap. 179, which is punishable with imprisonment for 10 years or more.

**PART II**

*Offences for which bail may be granted in the interest of justice*

1. Murder committed in circumstances connected with the discharge of a person's official duties.
2. Where the court is of the view that the strength of the evidence suggests that the defendant did not commit the offence with which he is charged.
3. Where the court is satisfied on the evidence presented that the defendant would be able to rely on the defence of self defence.

Read three times and passed the House of Assembly this  
day of \_\_\_\_\_, 2024.

**Speaker**

Read three times and passed the Senate this \_\_\_\_\_ day of  
\_\_\_\_\_, 2024.

**President**