

BAIL

THE BAIL ACT
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SCHEDULE.

THE BAIL ACT

Acts
19 of 2000,
20 of 2010.

[29th December, 2000.]

1. This Act may be cited as the Bail Act.

Short title.

2.—(1) In this Act, unless the context otherwise requires—

Interpreta-
tion.

“bail centre” means any facility declared by the Minister pursuant to section 20 to be a bail centre for the purposes of this Act;

“bail in criminal proceedings” means bail which may be granted—

(a) in or in connection with proceedings for an offence, to a person charged with or convicted of the offence;

(b) in connection with an offence, to a person who is under arrest for the offence or for whose arrest a warrant (endorsed for bail) has been issued;

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

“conviction” includes—

(a) a finding of guilt;

(b) a finding that a person is not guilty by reason of insanity;

(c) a conviction of an offence for which an order is made placing the defendant on probation or discharging him absolutely or conditionally,

and “convicted” shall be construed accordingly;

“Court” includes a Judge or a Resident Magistrate;

“defendant” means a person charged with or convicted of an offence;

“Judge” means a Judge of the Supreme Court or the Court of Appeal;

“offence” includes an alleged offence;

“police officer” means an arresting officer or an officer or sub-officer in charge of a police station or lock-up;

“surrender to custody” means, in relation to a person released on bail, surrendering himself into the custody of a court or the police at the time and place appointed for him to do so;

“vary” in relation to bail, means imposing further conditions after bail is granted or varying or revoking conditions imposed in relation to the grant of bail;

“young person” means a person who has attained the age of fourteen years and is under the age of seventeen years.

(2) References in sections 3 (3) and 4 (1) and (4) to “imprisonment” does not include a committal in default of payment of any sum of money, or for want of sufficient distress to satisfy any sum of money, or for failure to do or abstain from doing anything required to be done or left undone.

Entitlement
to bail.

3.—(1) Subject to the provisions of this Act, every person who is charged with an offence shall be entitled to be granted bail by a Court, a Justice of the Peace or a police officer, as the case may require.

(2) A person who is charged with an offence shall not be held in custody for longer than twenty-four hours without the question of bail being considered.

(3) Subject to section 4 (4), bail shall be granted to a defendant who is charged with an offence which is not punishable with imprisonment.

(4) A person charged with murder, treason or treason felony may be granted bail only by a Resident Magistrate or a Judge.

(4A) Bail shall be granted to a defendant in relation to an offence specified in the Second Schedule, only if the defendant satisfies the Court that bail should be granted.

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S. 2.
Second
Schedule.

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(5) Nothing in this Act shall preclude an application for bail on each occasion that a defendant appears before a Court in relation to the relevant offence.

4.—(1) Where the offence or one of the offences in relation to which the defendant is charged or convicted is punishable with imprisonment, bail may be denied to that defendant in the following circumstances—

Circumstances in which bail may be denied.

- (a) the Court, a Justice of the Peace or police officer is satisfied that there are substantial grounds for believing that the defendant, if released on bail would—
 - (i) fail to surrender to custody;
 - (ii) commit an offence while on bail; or
 - (iii) interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person;
- (b) the defendant is in custody in pursuance of the sentence of a Court or any authority acting under the Defence Act;
- (c) the Court is satisfied that it has not been practicable to obtain sufficient information for the purpose of taking the decisions required by this section for want of time since the institution of the proceedings against the defendant;
- (d) the defendant, having been released on bail in or in connection with the proceedings for the offence, is arrested in pursuance of section 14 (absconding by person released on bail);
- (e) the defendant is charged with an offence alleged to have been committed while he was released on bail;

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- (f) the defendant's case is adjourned for inquiries or a report and it appears to the Court that it would be impracticable to complete the inquiries or make the report without keeping the defendant in custody.

(2) In deciding whether or not any of the circumstances specified in subsection (1) (a) exists in relation to any defendant, the Court, a Justice of the Peace or police officer shall take into account—

- (a) the nature and seriousness of the offence;
- (b) the defendant's character, antecedents, association and community ties;
- (c) the defendant's record with regard to the fulfilment of his obligations under previous grants of bail;
- (d) except in the case of a defendant whose case is adjourned for inquiries or a report, the strength of the evidence of his having committed the offence or having failed to surrender to custody;
- (e) whether the defendant is a repeat offender, that is to say, a person who has been convicted on three previous occasions for offences which are punishable with imprisonment; or
- (f) any other factor which appears to be relevant including the defendant's health profile.

(3) Bail may be denied to a defendant who is charged with or convicted of an offence punishable with imprisonment if the Court, a Justice of the Peace or police officer is satisfied that the defendant should be kept in custody for his own protection or, where he is a child or young person, for his own welfare.

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(4) Bail may be denied to a defendant in relation to an offence which is not punishable with imprisonment if—

- (a) it appears to the Court or a Justice of the Peace that, having been previously granted bail in criminal proceedings, the defendant has failed to surrender to custody in accordance with his obligations under the grant of bail and there are reasonable grounds for believing that, in view of that failure, the defendant, if released on bail, would fail to surrender to custody;
- (b) the Court or a Justice of the Peace is satisfied that the defendant should be kept in custody for his own protection or, where he is a child or young person, for his own welfare;
- (c) the defendant is in custody in pursuance of a sentence of a Court or any authority acting under the Defence Act;
- (d) having been released on bail in or in connection with the proceedings for the offence, the defendant is arrested in pursuance of section 14.

(5) For the purposes of this section—

- (a) references to previous grants of bail in criminal proceedings include a reference to bail granted before the 29th day of December, 2000;
- (b) references to a defendant's being kept in custody or being in custody include, where a defendant is a child or young person, his being kept in a place of safety or a juvenile correctional centre under the Juveniles Act;
- (c) the question whether an offence is punishable with imprisonment shall be determined without regard to any enactment prohibiting or restricting the imprisonment of young defenders or first offenders.

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(6) Where the matter referred to in subsection (2) (e) (repeat offender) is taken into account in relation to a defendant, the offence to which the bail application relates shall not be tried before the Court which dealt with that application.

Restrictions
on condi-
tions of
bail.

5.—(1) Where a defendant is granted bail, the conditions specified in subsections (2) and (3) of section 6 shall not be imposed unless it appears to the Court, a Justice of the Peace or police officer that it is necessary to do so—

- (a) for the purpose of preventing the occurrence of any of the events referred to in section 4; or
- (b) to enable inquiries or a report to be made into the defendant's physical or mental condition.

(2) Subsection (1) shall apply to any application to the Court to vary the conditions of bail or to impose conditions in respect of bail which has been granted unconditionally.

General
provisions
relating
to bail.

6.—(1) A person who is granted bail in criminal proceedings shall surrender to custody.

(2) A Court, Justice of the Peace or police officer may, in accordance with regulations made under section 21, require any person to whom bail is granted to provide, at the person's option, as a condition for bail before his release—

- (a) a surety to secure his surrender to custody; or
 - (b) a payment of such amount as may be specified.
- (3) A person to whom bail is granted may be required—
- (a) to surrender his travel documents to the Court;
 - (b) to inform the Court if he intends to leave Jamaica;
 - (c) to report at specified times and dates to a police station;

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- (*d*) to comply with such other requirements as appear to the Court to be necessary to ensure that the person—
- (i) surrenders to custody;
 - (ii) does not commit an offence while on bail;
 - (iii) does not interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person;
- (*e*) to attend at a bail centre at such times as the Court may specify.

(4) The requirements referred to in subsection (3) (*d*) may include the imposition of a curfew, in respect of any person to whom bail is granted, between the hours specified by the Court, requiring the person to remain within a specified locality during the hours so specified.

(5) Where a parent or guardian of a juvenile consents to be a surety for the juvenile for the purposes of this section, the parent or guardian may be required to ensure that the juvenile complies with any conditions imposed on him by virtue of subsection (3), so, however, that—

- (*a*) no condition shall be imposed on the parent or guardian of a juvenile by virtue of this subsection where it appears that the juvenile will attain the age of seventeen years before the time to be appointed for him to surrender to custody; and
- (*b*) the parent or guardian shall not be required to secure compliance with any condition to which his consent does not extend and shall not, in respect of those conditions to which he gave consent, be bound in a sum greater than fifty thousand dollars.

(6) Where a Court has granted bail in criminal proceedings, it may on application—

- (*a*) by or on behalf of the person to whom it was granted; or
- (*b*) by the prosecutor or a police officer,

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vary the conditions of bail or, where bail was granted unconditionally, impose conditions.

(7) Where a person has been granted bail in criminal proceedings, bail shall not be revoked unless such revocation is justifiable by virtue of any provision of section 4.

Record of
decision as
to bail.

7.—(1) Subject to subsection (2), where—

- (a) a Court or a police officer grants bail in criminal proceedings;
- (b) a Court or a police officer appoints a time or place or a Court appoints a different time or place for a defendant granted bail in criminal proceedings to surrender to custody; or
- (c) a Court varies any condition of bail or imposes conditions in respect of bail in criminal proceedings,

that Court or police officer shall make a record of the decision and, where requested to do so by the defendant, shall cause a copy of the record of the decision to be given to him as soon as practicable after the record is made.

(2) Where bail in criminal proceedings is granted by endorsing a warrant of arrest, 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.

Court to
give reasons
for granting
or refusing
bail.

8.—(1) Where a Resident Magistrate's Court—

- (a) refuses bail in criminal proceedings;
- (b) imposes conditions in granting bail in criminal proceedings; or
- (c) varies any conditions of bail,

the Court shall, in order to enable the defendant to make an application in the matter to a Judge in Chambers, give reasons for refusing bail or for imposing or varying the conditions.

(2) A Court which is required by subsection (1) to give reasons for its decisions shall include a note of those reasons in the record of the decision and shall give a copy of that note to the defendant concerned or his representative within twenty-four hours.

9. Where a Resident Magistrate's Court refuses to grant bail to a defendant who is not represented by counsel, the Court shall inform him of the right of appeal conferred by section 10.

Defendant to be informed of right of appeal.

10.—(1) A defendant to whom section 9 applies may appeal to a Judge in Chambers.

Right of appeal.

(2) Where bail is granted to a defendant by a Court pursuant to this Act, the prosecution may, in the manner set out in subsection (3), appeal to a Judge of the Court of Appeal in Chambers in respect of the decision.

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S. 3(b).

(3) Where the prosecution intends to appeal a decision to grant bail to a defendant, the prosecution shall—

(a) at the conclusion of the proceedings in which the decision was communicated and before the release from custody of the defendant, give oral notice to the Court of that intention; and

(b) give to the Court and the defendant, within twenty-four hours after the conclusion of the proceedings referred to in paragraph (a), a written notice of the appeal, setting out the reasons therefor.

(4) Subject to subsection (5), upon the receipt of the oral notice referred to in subsection (3)(a), the Court shall remand the defendant in custody until the appeal is determined.

(5) Where the prosecution fails to file a written notice of appeal in accordance with subsection (3)(b), the order for the grant of bail shall take immediate effect.

(6) The hearing of an appeal under this section shall be commenced within seventy-two hours (excluding Saturdays, Sundays and days declared to be Public General Holidays under section 2 of the Holidays (Public General) Act), or such longer period, as the Court may in any particular case consider appropriate, after oral notice is given under subsection (3)(a).

Powers of
Judge in
Chambers.

11.—(1) Where a Resident Magistrate's Court refuses bail in criminal proceedings or imposes conditions on the grant of bail in criminal proceedings, the Judge in Chambers may grant or refuse bail or vary the conditions.

(2) In granting bail under subsection (1), the Judge in Chambers may direct the defendant to appear at a time and place which the Resident Magistrate's Court could have directed and the recognizance of any surety shall be conditioned accordingly.

Review of
custody
cases.

12.—(1) Where an application for bail has been refused by a Justice of the Peace or a police officer, such refusal shall be reviewed by the Resident Magistrate on the defendant's first appearance in Court in relation to the relevant offence.

(2) A Resident Magistrate shall carry out, at least once per week, a review of cases involving defendants who were granted bail but were unable to take up such bail.

13.—(1) A person who was granted bail prior to conviction and who appeals against that conviction may apply to the Judge or the Resident Magistrate before whom he was convicted or a Judge of the Court of Appeal, as the case may be, for bail pending the determination of his appeal.

Bail after conviction.

(2) A person whose application is refused by a Resident Magistrate may appeal against such refusal to the Court of Appeal.

14.—(1) A person who has been released on bail in criminal proceedings and has failed to surrender to custody is guilty of an offence unless he has reasonable cause for his failure to surrender to custody.

Offence of absconding by person released on bail.

(2) A person shall be guilty of an offence if—

- (a) having been released on bail in criminal proceedings; and
- (b) having failed to surrender to custody with reasonable cause therefor,

he fails to surrender to custody at the appointed place as soon after the appointed time as is reasonably practicable:

(3) It shall be for the defendant to prove that he had reasonable cause for failure to surrender to custody.

(4) A failure to give to a person granted bail in criminal proceedings a copy of the record of the decision shall not constitute a reasonable cause for that person's failure to surrender to custody.

(5) In any proceedings for an offence under subsection (1), a document purporting to be a copy of any part of the prescribed record which relates to the time and place appointed for the person specified in the record to surrender to custody and duly certified by the appropriate officer of the Court 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) "prescribed record" means the record of the decision of the Court or police officer made pursuant to section 8;

(b) "duly certified" means certified by the appropriate officer of the Court or by the police officer who took the decision or the police officer in charge of the police station from which the person to whom the record relates was released:

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- (c) "appropriate officer of the Court" means—
- (i) in the case of a Resident Magistrate's Court, the Clerk of the Courts;
 - (ii) in the case of the Supreme Court, the Registrar or Deputy Registrar.

15. A person who is guilty of an offence under section 14 (1) is liable on summary conviction before a Resident Magistrate to a fine not exceeding five hundred thousand dollars or to imprisonment for a term not exceeding two years. Penalty for absconding.

16.—(1) Where a person who has been released on bail in criminal proceedings and is under a duty to surrender to custody fails to surrender to custody at the time appointed for him to do so, the Court may issue a warrant for his arrest. Liability to arrest for absconding or breaching conditions of bail.

(2) Where a person who has been released on bail in criminal proceedings absents himself from the Court without the leave of the Court, at any time after he 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 his arrest.

(3) A person who has been released on bail in criminal proceedings may be arrested without warrant by a police officer where—

- (a) the police officer has reasonable grounds for believing that the person is not likely to surrender to custody;
- (b) the police officer has reasonable grounds for—
 - (i) believing that the person is likely to breach any of the conditions of his bail; or
 - (ii) suspecting that the person has breached any of those conditions;
- (c) in the case where the person was released on bail with a surety, the surety notifies the police officer in writing that—
 - (i) the person is unlikely to surrender to custody; and

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- (ii) for that reason, the surety wishes to be relieved of his obligations as a surety.

(4) A person arrested in pursuance of subsection (3) shall be brought as soon as practicable (being not later than twenty-four hours after his arrest or at least the next sitting of the Court)—

- (a) before a Resident Magistrate for the parish in which he is arrested; or
- (b) where he is arrested within twenty-four hours of the time appointed for him to surrender to custody, before the Court at which he is to surrender to custody.

(5) Where a Resident Magistrate before whom a person is brought under subsection (4) is of the opinion that the person—

- (a) is not likely to surrender to custody;
- (b) has committed or was about to commit another offence; or
- (c) has breached or is likely to breach any condition of his bail,

the Resident Magistrate may remand him in custody or commit him to custody, as the case may require, or grant him bail subject to the same or different conditions, but where the Resident Magistrate is not of any such opinion, the Resident Magistrate shall grant him bail subject to the same conditions, if any, as were originally imposed.

Bail with
surety.

17.—(1) This section applies where a person is granted bail in criminal proceedings on condition that he provides surety for the purpose of securing his surrender to custody.

(2) In considering the suitability of a proposed surety referred to in subsection (1)—

- (a) regard shall be had to such factors as the Court thinks fit, including—
 - (i) the surety's profession, occupation, trade or business;

(ii) his character and his previous convictions, if any;

(iii) his proximity, whether of kinship, place of residence or otherwise, to the person for whom he is to be a surety; and

(b) the surety shall be required to make a declaration in the form set out in the First Schedule.

First
Schedule.
20/2010
S. 4.

(3) Where a surety is required, a declaration in the prescribed form shall be made by a Justice of the Peace or a member of the Jamaica Constabulary Force not below the rank of Sergeant, a minister of religion or a principal of an educational institution other than a pre-primary school, as to his knowledge of that surety's address and good character.

(4) A Court, Justice of the Peace or police officer shall not refuse a surety unless that surety is exempt pursuant to regulations made under section 21 or is, in the opinion of the Court, otherwise unsuitable for the purpose.

(5) Where a Court, Justice of the Peace or police officer grants a person bail in criminal proceedings under subsection (1) but is unable to release the person because no surety or no suitable surety is available, the Court, Justice of the Peace or police officer shall fix the amount in which the surety is to be bound and subsections (6) and (7) shall apply for purpose of enabling the recognizance of the surety to be entered into subsequently.

(6) A recognizance of the surety under section (3) may be entered into before such of the persons or description of person as the Court may by order specify, or, if it makes no such order, before any of the following persons—

(a) where the decision is taken by a Resident Magistrate's Court, before any Resident Magistrate or Clerk of Courts;

(b) where the decision is taken by the Supreme Court or the Court of Appeal, before any of the persons specified in

paragraph (a) or where rules of Court provide otherwise, before a person of such other description as is specified in the Rules.

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

- (a) the Court which fixed the amount of the recognizance in which the surety was to be bound; or
- (b) a Resident Magistrate's Court in the parish in which the surety resides,

for that Court to take his recognizance and that Court shall, if satisfied as to his suitability, take his recognizance.

(8) Where pursuant to subsection (6), a recognizance is entered into otherwise than before the Court that fixed the amount of the recognizance, the recognizance shall have full force and effect as if it had been entered into before that Court.

(9) A person who in any declaration required under this section, makes a statement which he knows to be false in a material particular shall be guilty of an offence and liable on summary conviction before a Resident Magistrate to a fine not exceeding three million dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

Forfeiture
of security
or recogni-
zances.

18.—(1) Where a surety has provided a security for the purpose of securing a person's surrender to custody and that person fails to surrender to custody, the Court may order the forfeiture of the security.

(2) Where a Court orders the forfeiture of 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) Security which has been ordered to be forfeited under subsection (1) shall, to the extent of the forfeiture—

- (a) where it consists of money, be accounted for and paid in the same manner as a fine imposed by that Court would be;
- (b) where it does not consist of money, be enforced by such Resident Magistrate's Court as may be specified in the order.

(4) This section shall have effect in addition to any other provision in any law relating to enforcement of recognizances entered into in criminal proceedings.

19.—(1) A surety shall be released from obligation under the recognizance entered into by him, in the following circumstances—

Release of
surety or
refund of
payment.

- (a) where the Court grants such release on an application made in accordance with subsection (2);
- (b) where the Court makes a no order or a *nolle prosequi* is entered in relation to the defendant who provided the surety;
- (c) where the matter in respect of which the surety was provided is adjourned *sine die* or dismissed, as the case may be;
- (d) where the defendant concerned is acquitted or convicted, as the case may be.

(2) A surety who wishes to be released from his obligations under a recognizance—

- (a) shall apply in writing for such release to the Court by which such recognizance was taken; and
- (b) may attend before that Court for the hearing of such application.

(3) Where a surety is released, the defendant concerned—

- (a) shall forthwith be notified of such release; and

