

CHAPTER 122A

BAIL

ARRANGEMENT OF SECTIONS

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CHAPTER 122A

BAIL

An Act to make provision in relation to bail in or in connection with criminal proceedings in Barbados and to provide for related matters.

1996-28.
1998-23.
2000-26.
2002-3.
2002-12.

[15th January, 2001] Commence-
ment.
2001/11.

Citation

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

Short title.

Interpretation

2. (1) In this Act

Definitions.

"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;

"conviction" includes

- (a) a finding of guilt;
- (b) a finding that a person is not guilty by reason of insanity; 1998-23.

(c) a finding that a person is guilty but is suffering from diminished responsibility;

Cap. 116A.

(d) a finding under section 57(1) of the *Magistrate's Courts Act* 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;

"child" means a person under the age of 14;

"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;

Cap. 116A.

"Magistrate's Courts Rules" means rules made under section 268 of the *Magistrate's Courts Act*;

"offence" includes an alleged offence;

"surrender to custody" means

(a) in relation to a person released on bail, surrendering himself 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 him to do so;

- (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;

"young person" means a person who has attained the age of 14 and is under the age of 16.

(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 his surrendering himself into the custody of the court.

3. This Act applies

Application
of Act.

- (a) to an offence committed in Barbados or elsewhere; and

- (b) to an extraditable offence under the *Extradition Act*.

Cap. 189.

PART I

Right to Bail

- 4. (1)** Subject to this Act, a defendant shall be entitled to bail. Right to bail.

(2) Where bail is granted, the conditions of bail shall be reasonable.

- 5. (1)** Where a defendant is accused or convicted of an offence that is punishable with imprisonment, the court may refuse an application for bail if

Circum-
stances in
which bail
may be
refused.

- (a) the court is satisfied that there are substantial grounds for believing that the defendant, if released on bail, whether subject to conditions or not would
- (i) fail to surrender to custody,
 - (ii) commit an offence, or
 - (iii) interfere with witnesses;
- 2000-26. (b) the court is satisfied that the defendant should be kept in custody
- (a) for his own protection;
 - (b) for the protection of the community; or
 - (c) if he is a child or young person, for his own welfare;
- Cap. 159. (c) the defendant is in custody in pursuance of the sentence of a court or of any authority acting under the *Defence Act*;
- (d) 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;
- (e) having been released on bail in or in connection with the proceedings for the offence, the defendant has been arrested in pursuance of section 17;
- (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; or
- (g) the defendant is charged with an offence alleged to have been committed while he was released on bail.

(2) In the exercise of its discretion under subsection (1), the court shall have regard to any relevant factor including the following:

- (a) the nature and seriousness of the offence or default, and the probable method of dealing with the defendant for it;
- (b) the character, antecedents, associations and community ties of the defendant;
- (c) the defendant's record as respects the fulfilment of his obligations under previous grants of bail;
- (d) the strength of the evidence of his having committed the offence or having defaulted, except where the defendant's case is adjourned for inquiries or a report; and
- (e) the length of time the defendant would spend in custody if the court were to exercise the power conferred on it by section 218A of the *Magistrate's Courts Act*.

Cap. 116A.
2002-3.

(3) Where the defendant is accused or convicted of an offence that is not punishable with imprisonment, the court may refuse an application for bail if

- (a) the defendant has absconded under section 17 and the court believes that, in view of that failure, the defendant, if released on bail, would fail to surrender to custody;
- (b) the defendant should be kept in custody for his own protection or, if 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 of any authority acting under the *Defence Act*; or
- (d) the defendant, having been released on bail in or in connection with the proceedings for the offence, has been arrested in pursuance of section 17.

Cap. 159.

- 2002-12. (4) A person charged with
- (a) murder;
 - (b) treason;
 - (c) high treason; or
- Cap. 179. (d) an indictable offence under the *Firearms Act*,
- shall not be granted bail except by order of a Judge of the High Court.
- (5) For the purposes of this section
- (a) the question whether an offence is one punishable with imprisonment shall be determined without regard to any enactment prohibiting or restricting the imprisonment of young offenders or first offenders;
 - (b) references to previous grants of bail include references to bail granted before the coming into force of this Act;
 - (c) references to a defendant being kept in custody or being in custody include, where the defendant is a child or young person, references to his being kept in custody at a Reformatory and Industrial School in pursuance of a warrant of commitment under section 6 of the *Juvenile Offenders Act*;
- Cap. 138. (d) "court", in the expression "sentence of a court", includes a
- Cap. 118. service court as defined in section 2 of the *Visiting Forces Act*;
- (e) "default", in relation to the defendant, means the default for which he is to be dealt with in breach of a probation order.
- Police bail. **6.** On a person's being 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, if it will not be practicable to bring him before a magistrate within 24 hours after his being taken into custody, shall inquire into the case, and,

- (a) if the offence is not one punishable with imprisonment, shall 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.

PART II

Bail Procedure

7. (1) Subject to subsection (2), where
- (a) a court or police officer grants bail to a defendant;
 - (b) a court withholds bail from a defendant;
 - (c) a court, officer of the court or police officer appoints a time or place, or a court, officer of the 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,

Record of
decision as
to bail.

that court, officer or police officer shall make a record of the decision in the prescribed manner containing the prescribed particulars and, if requested to do so by the defendant, shall give him 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 court or an officer of a court, prescribed by rules made under this Act or, in relation to a decision of a police officer, prescribed by the direction of the Commissioner of Police.

Reasons relating to bail.

8. (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) withholding bail;
- (b) imposing or varying conditions relating to the granting 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 that is by subsection (1) required to 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 in relation to whom the decision was taken.

Right to apply to the High Court for bail.

9. (1) Where a magistrate withholds bail from a defendant who is not represented by an attorney-at-law, the magistrate shall,

- (a) if he is committing the defendant for trial to the High Court;
- (b) if he issues a certificate under subsection (2); or
- (c) in any other case,

inform him that he may apply to the High Court to be granted bail.

2000-26.

Cap. 116A.

(2) Where in criminal proceedings, after hearing full argument on an application for bail from the defendant, a magistrate's court remands a person in custody under section 18, 32, 45 or 57 of the *Magistrate's Courts Act*, 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 his 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.

10. Where the court decides not to grant bail to a defendant

- (a) the court shall at each subsequent hearing consider whether the defendant should be granted bail if he is in custody;
- (b) the defendant may support an application with any argument as to fact or law that he wishes;
- (c) the court at subsequent hearings need not hear any argument as to fact or law that it has heard previously.

Subsequent
hearings for
bail.

1998-23.

11. (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 withholds bail or imposes conditions in granting bail.

Powers of
the High
Court in
relation to
bail.

1998-23.

(2) Where the High Court grants bail to a defendant under subsection (1), it may direct him 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 refuses 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 III

Conditions of Bail

General provisions relating to bail.

12. (1) A person granted bail shall surrender to custody.

(2) A defendant may be required to give security for his surrender to custody, or the security may be given on his behalf, if it appears that he is unlikely to remain in Barbados until the time appointed for him to surrender to custody.

(3) A court may require any person applying for bail to

- (a) provide, as a condition for bail before his release, a surety to secure his surrender to custody;
- (b) surrender his passport to the court;
- (c) inform the court if he 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) makes himself 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 or young person consents to be a surety for the child or young person for the purposes of this subsection, the parent or guardian may be required to ensure that the child or young person complies with any requirement imposed on him by virtue of subsection (4), but

- (a) no requirement shall be imposed on the parent or the guardian of a young person by virtue of this subsection where it appears that the young person will attain the age of 16 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 requirement to which his consent does not extend and shall not, in respect of those requirements to which his consent does extend, be bound in a sum greater than \$500.

(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

vary the conditions of bail or impose conditions in respect of bail that it has granted unconditionally.

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

13. Where the defendant is granted bail, the conditions mentioned in section 12 shall not be imposed on him Exceptions to section 12 conditions.

- (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 subsection (4) of section 12 or to enable inquiries or a report to be made into the defendant's physical or mental condition.

Bail with
sureties.

14. (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.

2000-26.

(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 his 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 he resides

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

Forfeiture of
security.

15. (1) Where a person has given security in pursuance of section 12(2) and a court is satisfied that he failed to surrender to custody, then, unless it appears that he had reasonable cause for his 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 his 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;
- (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 IV

Miscellaneous

16. (1) Where a person

- (a) indemnifies another or agrees to indemnify another; or
- (b) accepts a fee from another or agrees to accept a fee from another

Indemnifying or agreeing to indemnify sureties.

against any liability which that other may incur as a surety to secure the surrender to custody of a defendant, he and that other person are guilty of an offence.

(2) An offence under subsection (1) is committed whether

- (a) the agreement is made before or after the person to be indemnified becomes a surety;
- (b) the person becomes a surety or not; or
- (c) the agreement contemplates compensation in money or in money's worth.

(3) Where a magistrate convicts a person of an offence under subsection (1), the magistrate may commit that person in custody or on bail to the High Court for sentence if he thinks

- (a) that the circumstances of the offence are such that greater punishment should be inflicted for that offence than he has power to inflict; or
- (b) in a case where the court commits that person to the High Court for another offence, that it would be appropriate for him to be dealt with for the offence under subsection (1) by the court before which he is tried for the other offence.

- (4) A person guilty of an offence under subsection (1) is liable
 - (a) on summary conviction, to imprisonment for a term of 3 months or to a fine of \$1 000 or to both; or
 - (b) on conviction on indictment or if sentenced by the High Court on committal for sentence under subsection (3), to imprisonment for a term of 12 months or to a fine or to both.

(5) No proceedings for an offence under subsection (1) shall be instituted except by or with the consent of the Director of Public Prosecutions.

Absconding. **17.** (1) A person who has been released on bail is guilty of an offence

- (a) if he fails without reasonable cause to surrender to custody; or
- (b) if he, 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 accused to prove that he had reasonable cause for his failure 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 his failure to surrender to custody.

(4) An offence under subsection (1) is punishable either on summary conviction or as if it were a criminal contempt of court.

(5) Where a magistrate convicts a person of an offence under subsection (1), the magistrate may, if he thinks

- (a) that the circumstances of the offence are such that greater punishment should be inflicted for that offence than he has power to inflict; or

- (b) in a case where the court commits that person to the High Court for trial for another offence, that it would be appropriate for him to be dealt with for the offence under subsection (1) by the court before which he is tried for the other offence

commit him in custody or on bail to the High Court for sentence.

(6) A person who is convicted summarily of an offence under subsection (1) and

- (a) is not committed to the High Court for sentence is liable to imprisonment for a term of 3 months or to a fine of \$1 000 or to both;
- (b) is committed to the High Court for sentence or is dealt with for contempt is liable to imprisonment for a term of 12 months or to a fine or to both.

(7) 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.

- (8) For the purposes of subsection (7),
- (a) the "prescribed record" means the record of the decision of the court, officer or police officer made in pursuance of section 7;
- (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
- (i) in the case of a magistrate's court, the clerk to the court or such other officer as may be authorized by him to act for the purpose;
 - (ii) in the case of the High Court, the Registrar or such other officer as may be authorized by him to act for the purpose.

Arrest for
absconding
etc.

18. (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 for him to do so, the court may issue a warrant for his arrest.

(2) Where a person who has been released on bail absents himself from 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; but no warrant shall be issued under this subsection if that person is absent in accordance with leave given to him 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; or
- (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 his obligations as a surety;

(d) if new evidence justifying a further arrest has come to light since his 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 his arrest, before a magistrate for the district in which he is arrested;

(b) a person is arrested within 24 hours of the time appointed for him to surrender to custody, he shall be brought without delay before the court at which he 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 his bail,

(a) remand him in custody;

(b) commit him to custody; or

(c) grant him bail subject to the same or to different conditions,

but if not of that opinion shall grant him bail subject to the same conditions, if any, as were originally imposed.

(7) Where the person brought before the magistrate is a child or young person and the magistrate does not grant him bail, subsection (6) shall have effect subject to the provisions of section 4 of the *Juvenile Offenders Act*.

Cap. 138.

19. (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, provided 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) above,

(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 re-hearing.

Rules.
1998-23.

20. (1) The Rules Committee may make rules

(a) generally for giving effect to this Act; and

(b) for prescribing anything that is authorised or required to be prescribed by this Act.

Cap. 117A.

(2) For the purposes of this section, "the Rules Committee" means the Committee established under section 81 of the *Supreme Court of Judicature Act*.

Amendment
of other
Acts and
transitional.

21. *Omitted.*