



BERMUDA

BAIL ACT 2005

2005 : 24

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WHEREAS it is expedient to make new provisions in relation to bail in or in connection with criminal proceedings in Bermuda; and to make provision for connected matters;

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:—

PRELIMINARY

Short title and commencement

- 1 (1) This Act may be cited as the Bail Act 2005.
- (2) The provisions of this Act shall come into operation on such day as the Minister responsible for justice may appoint by notice published in the Gazette, and the Minister may appoint different days for different provisions.

Meaning of "bail in criminal proceedings"

- 2 (1) In this Act "bail in criminal proceedings" means—
- (a) bail grantable in or in connection with proceedings for an offence to a person who is accused or convicted of the offence; or
 - (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 being issued.
- (2) In this Act "bail" means bail grantable under the law (including common law) for the time being in force.
- (3) This section does not apply to bail in, or in connection with, criminal proceedings outside Bermuda.
- (4) This section applies—
- (a) whether the offence was committed in Bermuda or elsewhere; and
 - (b) whether it is an offence under the law of Bermuda, or of any other country or territory.

(5) Bail in criminal proceedings shall be granted (and in particular shall be granted unconditionally or conditionally) in accordance with this Act.

Other definitions

3 (1) In this Act, unless the context otherwise requires, “conviction” includes—

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

(2) In this Act—

“court” includes a judge or a magistrate;

“Court of Appeal rules” means rules made under section 9 of the Court of Appeal Act 1964;

“electronic monitoring equipment” means any equipment or device designated by the Minister responsible for Justice under section 4 as suitable to be used for monitoring the movements and location of a person on whose body it is fitted;

“Magistrates Courts rules” means rules made under section 21 of the Magistrates Act 1948;

“offence” includes an alleged offence;

“proceedings against a fugitive offender” means proceedings under the Extradition Act 2003 (Overseas Territories) Order 2016 or any other enactment providing for the extradition of fugitive offenders;

“Supreme Court rules” means rules made under section 62 of the Supreme Court Act 1905;

“surrender to custody” means, in relation to a person released on bail, surrendering himself into the custody of the court or of a 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;

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

“young person” means a person who is under the age of eighteen.

(3) Where an enactment (whenever passed) which relates to bail in criminal proceedings refers to the person 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.

(4) Any reference in this Act to any other enactment is a reference thereto as amended, and includes a reference thereto as extended or applied, by or under any other enactment, including this Act.

[Section 3 subsection (2) "electronic monitoring equipment" inserted by 2011 : 50 s. 2 effective 21 December 2011]

INCIDENTS OF BAIL IN CRIMINAL PROCEEDINGS

General provisions

4 (1) A person granted bail in criminal proceedings shall be under a duty to surrender to custody, and that duty is enforceable in accordance with section 10.

(2) Except as provided by this section—

- (a) no recognizance for his surrender to custody shall be taken from him;
- (b) no security for his surrender to custody shall be taken from him;
- (c) he shall not be required to provide a surety or sureties for his surrender to custody; and
- (d) no other requirement shall be imposed on him as a condition of bail.

(3) He may be required, before release on bail, to enter into a recognizance or to provide a surety or sureties to secure his surrender to custody.

(4) He may be required to comply, before release on bail or later, with such requirements as appear to the court to be necessary to secure that—

- (a) he surrenders to custody;
- (b) he does not commit an offence while on bail;
- (c) he does not interfere with witnesses or otherwise obstruct the course of justice whether in relation to himself or any other person;
- (ca) he wears electronic monitoring equipment that will enable his movements and location to be monitored;
- (d) he makes himself available for the purpose of enabling inquiries or a report to be made to assist the court in dealing with him for the offence;

and, in any Act, “the normal powers to impose conditions of bail” means the powers to impose conditions under paragraph (a), (b), (c) or (ca).

(5) In the case of a person accused of murder the court granting bail may impose as conditions of bail—

- (a) a requirement that the accused shall undergo medical examination for the purpose of enabling such reports to be prepared; and
- (b) a requirement that he shall for that purpose attend such an institution or place as the court directs and comply with any other directions which may be given to him for that purpose by a medical practitioner.

(6) If a parent or guardian of a young person consents to be surety for the young person for the purposes of this subsection, the parent or guardian may be required to secure that the young person complies with any requirement imposed on him by virtue of subsection (4) or (5) 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 18 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 \$1,000.

(7) Where a court has granted bail in criminal proceedings that court or, where that court has sent a person on bail to the Supreme Court for trial or to be sentenced or otherwise dealt with, that court or the Supreme Court may on application—

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

vary the conditions of bail or impose conditions in respect of bail which has been granted unconditionally.

(7A) The Minister responsible for Justice shall designate electronic monitoring equipment suitable to be used for monitoring the movements and locations of a person on whom it is fitted, for the purposes of this Act, by Order published in the Gazette.

(7B) An Order made under subsection (7A) shall be subject to the negative resolution procedure.

(8) This section is subject, in its application to bail granted by a police officer, to section 5.

[Section 4 subsection (4) amended, and subsections (7A) and (7B) inserted, by 2011 : 50 s. 3 effective 21 December 2011; subsection (7) amended by 2015 : 38 s. 91 effective 6 November 2015]

Conditions of bail in case of police bail

5 (1) Section 4 applies, in relation to bail granted by a custody officer under Part V of the Police and Criminal Evidence Act 2006 in cases where the normal powers to impose conditions of bail are available to him, subject to the following modifications.

(2) Subsection (4) of section 4 does not authorise the imposition of a requirement under paragraph (d).

(3) For subsection (7) of section 4, substitute the following—

“(7) Where a custody officer has granted bail in criminal proceedings he may, at the request of the person to whom it was granted, vary the conditions of bail; and in doing so he may impose conditions or more onerous conditions.”.

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(4) Where a police officer grants bail to a person, no conditions shall be imposed under section 4(3), (4) or (6) unless it appears to the police officer that it is necessary to do so—

- (a) to prevent that person from failing to surrender to custody;
- (b) to prevent that person from committing an offence while on bail;
- (c) to prevent that person from interfering with witnesses or otherwise obstructing the course of justice, whether in relation to himself or any other person; or
- (d) for the person's own safety.

(5) Subsection (4) also applies on any request to a custody officer under subsection (7) of section 4 to vary the conditions of bail.

[Section 5 effective by notice in Gazette; Section 5 subsection (1) amended by 2008:18 s.28 effective 8 September 2008; subsection (4) repealed and substituted by 2011 : 19 s. 2 effective 8 July 2011]

Police bail

5A (1) Where a police officer of or above the rank of inspector grants bail under section 462 of the Criminal Code Act 1907—

- (a) before charge while awaiting a decision from the Office of the Director of Public Prosecutions on whether to charge or not; or
- (b) after charge,

in respect of a person who has been taken into custody for an offence, that officer may impose conditions of bail, in accordance with this section.

(2) Section 4 applies in relation to bail granted by a police officer of or above the rank of inspector under section 462 of the Criminal Code Act 1907, subject to the following modifications—

- (a) in subsection (4), the reference to “the court” shall be construed as a reference to “a police officer of or above the rank of inspector”, and paragraph (d) does not apply;
- (b) subsection (5) does not apply; and
- (c) the following is substituted for subsection (7)—

“(7) Where a police officer of or above the rank of inspector has imposed conditions of bail under subsection (1), a police officer of or above the rank of inspector may, at the request of the person who was granted bail, vary the conditions of bail; and in doing so he may impose other or more onerous conditions.”.

(3) Where a police officer of or above the rank of inspector grants bail to a person, no conditions shall be imposed under section 4(3), (4) or (6) (as applied by subsection (2) of this section) unless it appears to the police officer that it is necessary to do so —

- (a) to prevent that person from failing to surrender to custody;

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- (b) to prevent that person from committing an offence while on bail;
 - (c) to prevent that person from interfering with witnesses or otherwise obstructing the course of justice, whether in relation to himself or any other person; or
 - (d) for the person's own safety.
- (4) For greater certainty, conditions referred to in subsection (3) include, but are not limited to—
- (a) a requirement to report to a police station;
 - (ab) a requirement that the person has a surety;
 - (b) the imposition of a curfew;
 - (c) a requirement to reside at a specified address;
 - (d) a requirement not to contact (directly or indirectly), or communicate or associate with, certain persons;
 - (e) a requirement not to enter certain areas, buildings or places, including licensed premises;
 - (f) a requirement not to drive vehicles;
 - (g) surrender of passport or other travel documents; and
 - (h) a requirement to wear electronic monitoring equipment that will enable his movements and locations to be monitored.

(5) Subsections (3) and (4) of this section also apply with regard to any request under section 4(7) (as substituted by subsection (2)(c) of this section) to vary conditions of bail.

[Section 5A inserted by 2010 : 32 s. 2 effective 29 June 2010; Section 5A amended by 2011 : 19 s. 3 effective 8 July 2011; Section 5A subsection (4)(h) repealed and substituted by 2011 : 50 s. 4 effective 21 December 2011]

Liability to arrest for breaching conditions of police bail

5B A person who has been released on police bail under section 5A may be arrested without warrant by a police officer, if the police officer has reasonable grounds for suspecting that the person has breached or is likely to breach any of the conditions of the police bail.

[Section 5B inserted by 2011 : 19 s. 4 effective 8 July 2011]

Application to vary police bail conditions

5C (1) A person upon whom bail conditions have been imposed under section 5A, may apply in writing, stating the grounds upon which the application is made, to—

- (a) the officer who imposed the bail conditions;
- (b) another officer of the rank of Inspector or above; or

(c) a Magistrates Court,
to vary the bail conditions imposed.

(2) Where an application is made under subsection (1), it shall be open to the reviewing officer or the Magistrates Court, to impose lesser or more onerous conditions.

[Section 5C inserted by 2011 : 19 s. 5 effective 8 July 2011]

General right to bail of accused persons and others

6 (1) A person to whom this section applies shall be granted bail except as provided in Schedule 1.

(2) This section applies to a person who is accused of an offence when—

- (a) he appears or is brought before the Magistrates Court or the Supreme Court in the course of or in connection with proceedings for the offence; or
- (b) he applies to a court for bail or for a variation of the conditions of bail in connection with the proceedings.

(3) Subsection (2) does not apply as respects proceedings on or after a person's conviction of the offence or proceedings against a fugitive offender for the offence.

(4) This section also applies to a person who has been convicted of an offence and whose case is adjourned by the court for the purpose of enabling inquiries or a report to be made to assist the court in dealing with him for the offence.

(5) Schedule 1 also has effect as respects conditions of bail for a person to whom this section applies.

(6) In Schedule 1 “the defendant” means a person to whom this section applies and any reference to a defendant whose case is adjourned for inquiries or a report is a reference to a person to whom this section applies by virtue of subsection (4).

(7) In taking any decisions required by Part 1 or Part II of Schedule 1, the considerations to which the court is to have regard include, as far as relevant, any misuse of controlled drugs by the defendant.

(8) In subsection (7) “controlled drugs” and “misuse” have the same meaning as in the Misuse of Drugs Act 1972.

SUPPLEMENTARY

Supplementary provisions about decisions on bail

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

- (a) a court or police officer grants bail in criminal proceedings; or
- (b) a court withholds bail in criminal proceedings from a person to whom section 6 applies; or

- (c) a court, officer of a court, or police officer appoints a time or place, or a court or officer of a court appoints a different time or place, for a person granted bail in criminal proceedings to surrender to custody; or
- (d) a court or police officer varies any conditions of bail or imposes conditions in respect of bail in criminal proceedings;

that court, officer of a court or police officer shall make a record of the decision in the prescribed manner and containing the prescribed particulars and if requested to do so by the person in relation to whom the decision was taken, shall cause him to be given a copy of the record of the decision as soon as practicable after the record is made.

(2) Where bail in criminal proceedings 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 magistrate or judge who issued the warrant.

(3) Where the Magistrates Court or the Supreme Court grants bail in criminal proceedings to a person to whom section 6 applies after hearing representations from the prosecutor in favour of withholding bail, then the court shall give reasons for granting bail.

(4) A court which is by virtue of subsection (3) required to give reasons for its decision shall include a note of those reasons in the record of its decision and if requested to do so by the prosecutor, shall cause the prosecutor to be given a copy of the record of the decision as soon as practicable after the record is made.

(5) Where the Magistrates Court or the Supreme Court—

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

and does so in relation to a person to whom section 6 applies, then the court shall, with a view to enabling him to consider making an application in the matter to another court, give reasons for withholding bail or for imposing or varying the conditions.

(6) A court which is by virtue of subsection (5) required to give reasons for its decision shall include a note of those reasons in the record of its decision and shall (except in a case where, by virtue of subsection (7), this need not be done) give a copy of that note to the person in relation to whom the decision was taken.

(7) The Supreme Court need not give a copy of the note of the reasons for its decision to the person in relation to whom the decision was taken where that person is represented by a barrister and attorney unless his barrister and attorney requests the court to do so.

(8) Where the Magistrates Court withholds bail in criminal proceedings from a person who is not represented by a barrister and attorney, the court shall inform him that he may apply to the Supreme Court for that purpose.

(9) Where in criminal proceedings the Magistrates Court remands a person in custody for any purpose after hearing full argument on an application for bail from him and either—

- (a) it has not previously heard such argument on an application for bail from him in those proceedings; or
- (b) it has previously heard full argument from him on such an application but it is satisfied that there has been a change in his circumstances or that new considerations have been placed before it,

it shall be the duty of the court to issue forthwith a certificate in the prescribed form that it has heard full argument on his application for bail before it refused the application.

(10) Where the court issues a certificate under subsection (9) in a case to which paragraph (b) of that subsection applies, it shall state in the certificate the nature of the change of circumstances or the new considerations which caused it to hear a further fully argued bail application.

(11) Where a court issues a certificate under subsection (9) it shall cause the person to whom it refuses bail to be given a copy of the certificate.

(12) In this section “prescribed” means, in relation to the decision of a court or an officer of a court, prescribed by Supreme Court rules or Magistrates Court rules, as the case requires or, in relation to a decision of a police officer, prescribed by direction of the Minister responsible for justice.

(13) This section is subject, in its application to bail granted by a police officer, to section 8.

[Section 7 subsection (13) effective by notice in Gazette]

Supplementary provisions in cases of police bail

8 (1) Section 7 applies, in relation to bail granted by a custody officer under Part V of the Police and Criminal Evidence Act 2006 in cases where the normal powers to impose conditions of bail are available to him, subject to the following modifications.

- (2) Subsections (3) and (4) shall be omitted.
- (3) For subsection (5) substitute the following—

“(5) Where a custody officer, in relation: to any person—

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

the custody officer shall, with a view to enabling that person to consider requesting him or another custody officer, or making an application to the Magistrates Court, to vary the conditions, give reasons for imposing or varying the conditions.”.

- (4) For subsection (6) substitute the following—

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“(6) A custody officer who is by virtue of subsection (5) required to give reasons for his decision shall include a note of those reasons in the custody record and shall give a copy of that note to the person in relation to whom the decision was taken.”.

(5) Subsections (7) to (13) are omitted.

[Section 8 effective by notice in Gazette; Section 8(1) amended by 2008:18 s.28 effective 8 September 2008]

Reconsideration of decisions granting bail

9 (1) Where the Magistrates Court or Supreme Court has granted bail in criminal proceedings in connection with an offence, or proceedings for an offence, to which this section applies or a police officer has granted bail in criminal proceedings in connection with proceedings for such an offence, that court may, on application by the prosecutor for the decision to be reconsidered—

- (a) vary the conditions of bail;
- (b) impose conditions in respect of bail which has been granted unconditionally; or
- (c) withhold bail.

(2) The offences to which this section applies are offences triable on indictment and offences triable either way.

(3) No application for the reconsideration of a decision under this section shall be made unless it is based on information which was not available to the court or police officer when the decision was taken.

(4) Whether or not the person to whom the application relates appears before it, the court shall take the decision in accordance with section 6(1) (and Schedule 1).

(5) Where the decision of the court on a reconsideration under this section is to withhold bail from the person to whom it was originally granted the court shall—

- (a) if that person is before the court, remand him in custody; and
- (b) if that person is not before the court, order him to surrender himself forthwith into the custody of the court.

(6) Where a person surrenders himself into the custody of the court in compliance with an order under subsection (5), the court shall remand him in custody.

(7) A person who has been ordered to surrender to custody under subsection (5) may be arrested without warrant by a police officer if he fails without reasonable cause to surrender to custody in accordance with the order.

(8) A person arrested in pursuance of subsection (7) shall be brought as soon as practicable, and in any event within 24 hours after his arrest, before a magistrate and the magistrate shall remand him in custody.

(9) In reckoning for the purposes of subsection (8) any period of 24 hours, no account shall be taken of any public holiday.

(10) Where the court, on a reconsideration under this section, refuses to withhold bail from a relevant person after hearing representations from the prosecutor in favour of withholding bail, then the court shall give reasons for refusing to withhold bail.

(11) In subsection (10), “relevant person” means a person to whom section 6(1) (and Schedule 1) is applicable in accordance with subsection (4).

(12) A court which is by virtue of subsection (10) required to give reasons for its decision shall include a note of those reasons in any record of its decision and, if requested to do so by the prosecutor, shall cause the prosecutor to be given a copy of any such record as soon as practicable after the record is made.

(13) Schedule 2 (which provides a procedure on reconsideration of bail) shall have effect.

Liability to arrest for absconding or breaking conditions of bail

10 (1) If a person who has been released on bail in criminal proceedings and is under a duty to surrender into the custody of a court fails to surrender to custody at the time appointed for him to do so the court may issue a warrant for his arrest.

(2) If a person who has been released on bail in criminal proceedings absents himself from the court at any time after he has surrendered into 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 where that person is absent in accordance with leave given to him by or on behalf of the court.

(3) A person who has been released on bail in criminal proceedings and is under a duty to surrender into the custody of a 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 one or more surety or sureties, if a surety notifies a police officer in writing that that person is unlikely to surrender to custody and that for that reason the surety wishes to be relieved of his obligations as a surety.

(4) A person arrested in pursuance of subsection (3)—

- (a) shall, except where he was arrested within 24 hours of the time appointed for him to surrender to custody, be brought as soon as practicable and in any event within 24 hours after his arrest before a magistrate; and
- (b) in the said excepted case shall be brought before the court at which he was to have surrendered to custody.

(5) In reckoning for the purposes of subsection (4) any period of 24 hours, no account shall be taken of a public holiday.

(6) A magistrate before whom a person is brought under subsection (4) may, if of the opinion that that person—

- (a) is not likely to surrender to custody; or
- (b) has broken or is likely to break any condition of his bail,

remand him in custody, as the case may require, or alternatively, grant him bail subject to the same or to different conditions, but if not of the opinion shall grant him bail subject to the same conditions (if any) as were originally imposed.

Bail with sureties

11 (1) This section applies where a person is granted bail in criminal proceedings on condition that he provides one or more surety or sureties for the purpose of securing that he surrenders to custody.

(2) In considering the suitability for that purpose of a proposed surety, regard may be had (amongst other things) to—

- (a) the surety's financial resources;
- (b) his character and any previous convictions of his; and
- (c) his proximity (whether in point of kinship, place of residence or otherwise) to the person for whom he is to be surety.

(3) Where a court grants a person bail in criminal proceedings on such a condition but is unable to release him because no surety, or no suitable surety is available, the court shall fix the amount in which the surety is to be bound and subsections (4) and (5) shall apply for the purpose of enabling the recognizance of the surety to be entered into subsequently.

(4) Where this subsection applies, the recognizance of the surety may be entered into before such of the following persons or descriptions of persons as the court may by order specify or, if it makes no such order, before any of the following persons, that is to say—

- (a) where the decision is taken by the Magistrates Court, before a magistrate or a police officer who either is of the rank of inspector or above or is in charge of a police station; or, if Magistrates 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 Supreme Court, before the Registrar of the Supreme Court or, if Supreme Court rules so provide, by a person of such other description as is specified in the rules;
- (c) where the decision is taken by the Court of Appeal, before the Registrar of the Court of Appeal or, if Court of Appeal rules so provide, by a person of such other description as is specified in the rules;

and Magistrates Court rules, Supreme Court rules or Court of Appeal rules may also prescribe the manner in which a recognizance which is to be entered into before such a person is to be entered into.

(5) Where a surety seeks to enter into his recognizance before any person in accordance with subsection (4) but that person declines to take his recognizance because he is not satisfied of the surety's suitability, the surety may apply to the court which fixed the amount of the recognizance in which the surety was to be bound for that court to take his recognizance and that court shall, if satisfied of his suitability, take his recognizance.

(6) Where, in pursuance of subsection (4), 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.

Bail and failure to obtain sureties

11A Where a person is granted bail under section 11, and that person is unable to obtain the required surety, that person shall be remanded into the care and custody of the Commissioner of Prisons until—

- (a) such court ordered surety is obtained; or
- (b) final determination of the matter for which bail has been granted.

[Section 11A inserted by 2012 : 28 s. 2 effective 20 July 2012]

Estreat of recognizance

12 (1) Where a recognizance is conditioned for the appearance of an accused before the Magistrates Court, the Supreme Court or the Court of Appeal, or for his doing any other thing connected with criminal proceedings before the court, and the accused fails to appear in accordance with the condition or fails to do such other thing, the court may declare the recognizance to be forfeited and adjudge the person bound thereby, whether as principal or sureties, or any of them, to pay the sum in which they are respectively bound.

(2) The court which declares the recognizance to be forfeited may, instead of adjudging any person to pay the whole sum in which he is bound, adjudge him to pay part only of the sum or remit the sum.

(3) Payment of any sum adjudged to be paid under this section may be enforced, and any such sum shall be applied, as if it were a fine and as if the adjudication were a summary conviction of an offence not punishable with imprisonment.

Warrant endorsed for bail

13 (1) A magistrate or judge on issuing a warrant for the arrest of any person may grant him bail by endorsing the warrant for bail, that is to say, by endorsing the warrant with a direction in accordance with subsection (2).

(2) A direction for bail endorsed on a warrant under subsection (1) shall in the case of bail in criminal proceedings, state that the person arrested is to be released on bail subject to a duty to appear before such court and at such time as may be specified in the endorsement.

- (3) Where a warrant has been endorsed for bail under subsection (1)—
- (a) where the person arrested is to be released on bail on his entering into a recognizance without sureties, it shall not be necessary to take him to a police station, but if he is so taken, he shall be released from custody on his entering into the recognizance; and
 - (b) where he is to be released on his entering into a recognizance with sureties, he shall be taken to a police station on his arrest, and the custody officer there shall (subject to his approving any surety tendered in compliance with the endorsement) release him from custody as directed in the endorsement.

MISCELLANEOUS

Offence of agreeing to indemnify sureties in criminal proceedings

14 (1) If a person agrees with another to indemnify that other against any liability which that other may incur as a surety to secure the surrender to custody of a person accused or convicted of or under arrest for an offence, he and that other person shall be guilty of an offence.

(2) An offence under subsection (1) is committed whether the agreement is made before or after the person to be indemnified becomes a surety and whether or not he becomes a surety and whether the agreement contemplates compensation in money or in money's worth.

(3) Where the Magistrates Court convicts a person of an offence under subsection (1) the court may, if it thinks—

- (a) that the circumstances of the offence are such that greater punishment should be inflicted for that offence than the court has power to inflict; or
- (b) in a case where it sends that person for trial to the Supreme 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,

send him in custody or on bail to the Supreme Court for sentence.

(4) A person guilty of an offence under subsection (1) shall be liable—

- (a) on summary conviction, to imprisonment for a term of 3 months or to a fine of \$500 or to both; or
- (b) on conviction on indictment or if sentenced by the Supreme Court following sending for sentence under subsection (3), to imprisonment for a term of 12 months or to a fine of \$2,000 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

[Section 14 subsections (3) and (4) amended by 2015 : 38 s. 91 effective 6 November 2015]

Offences against electronic monitoring equipment

14A (1) A person who—

- (a) unlawfully interferes with the operation of any electronic monitoring equipment; or
- (b) wilfully or unlawfully destroys or damages electronic monitoring equipment,

commits an offence and is liable on summary conviction to a fine of \$4,000 or to imprisonment for two years.

(2) Where the operation of electronic monitoring equipment fitted on a person is unlawfully interfered with or the equipment is wilfully or unlawfully destroyed or damaged, the burden shall be on the person on whom it is fitted to prove that he is not responsible for the interference, destruction or damage.

[Section 14A inserted by 2011 : 50 s. 5 effective 21 December 2011]

Repeals and transitional provisions

15 (1) The enactments specified in Schedule 3 to this Act are hereby repealed to the extent specified in the second column of that Schedule.

(2) The transitional provisions contained in Schedule 4 to this Act shall have effect.

SCHEDULE 1

(section 6)

PERSONS ENTITLED TO BAIL: SUPPLEMENTARY PROVISIONS

PART I

DEFENDANTS ACCUSED OR CONVICTED OF IMPRISONABLE OFFENCES

Defendants to whom Part I applies

1. Where the offence or one of the offences of which the defendant is accused or convicted in the proceedings is punishable with imprisonment, the following provisions of this Part of this Schedule apply.

Exceptions to right to bail

2. The defendant need not be granted bail if the offence is—

- (a) murder
- (b) an offence under the Firearms Act 1973; or
- (c) a serious arrestable offence, within the meaning of section 3 of the Police and Criminal Evidence Act 2006, involving the use of a firearm or ammunition, within the meaning of section 1 of the Firearms Act 1973.

3. The defendant need not be granted bail if 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—

- (a) fail to surrender to custody; or
- (b) commit an offence while on bail; or
- (c) interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person.

4. The defendant need not be granted bail if—

- (a) the offence is an indictable offence or an offence triable either way; and
- (b) it appears to the court that he was on bail in criminal proceedings on the date of the offence.

5. The defendant need not be granted bail if the court is satisfied that the defendant should be kept in custody for his own protection or, if he is a young person, for his own welfare.

6. The defendant need not be granted bail if he is in custody in pursuance of the sentence of a court.

7. The defendant need not be granted bail where the court is satisfied that it has not been practicable to obtain sufficient information for the purpose of taking the decisions required by this Part of this Schedule for want of time since the institution of the proceedings against him.

8. The defendant need not be granted bail if, having been released on bail in or in connection with the proceedings for the offence, he has been arrested in pursuance of section 10.

Exception applicable only to defendant whose case is adjourned for inquiries or a report

9. Where his case is adjourned for inquiries or a report, the defendant need not be granted bail if it appears to the court that it would be impracticable to complete the inquiries or make the report without keeping the defendant in custody.

Restriction of conditions of bail

10. (1) Subject to subparagraph (3), where the defendant is granted bail, no conditions shall be imposed under subsections (3) to (6) (except subsection (4)(d) of section 4) unless it appears to the court that it is necessary to do so for the purpose of preventing the occurrence of any of the events mentioned in paragraph 3 of this Part.

(2) No condition shall be imposed under section 4(4)(d) unless it appears to be necessary to do so for the purpose of enabling inquiries or a report to be made.

(3) Subparagraphs (1) and (2) also apply on any application to the court to vary the conditions of bail or to impose conditions in respect of bail which has been granted unconditionally.

(4) The restriction imposed by subparagraph (2) shall not apply to the conditions required to be imposed under section 4(5).

Decisions under paragraph 3 or 4

11. In taking the decisions required by paragraph 3 or 4 of this Part, the court shall have regard to such of the following considerations as appear to it to be relevant, that is to say—

- (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 in criminal proceedings;
- (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 defaulted,

as well as to any others which appear to be relevant.

PART II

DEFENDANTS ACCUSED OR CONVICTED OF NON-IMPRISONABLE OFFENCES

Defendants to whom Part II applies

1. Where the offence or every offence of which the defendant is accused or convicted in the proceedings is one which is not punishable with imprisonment, the following provisions of this Part of this Schedule apply.

Exceptions to right to bail

2. The defendant need not be granted bail if—

- (a) it appears to the court that, having been previously granted bail in criminal proceedings, he has failed to surrender to custody in accordance with his obligations under the grant of bail; and
- (b) the court believes, in view of that failure, that the defendant, if released on bail (whether subject to conditions or not) would fail to surrender to custody.

3. The defendant need not be granted bail if the court is satisfied that the defendant should be kept in custody for his own protection or, if he is a young person, for his own welfare.

4. The defendant need not be granted bail if he is in custody in pursuance of the sentence of a court.

5. The defendant need not be granted bail if, having been released on bail in or in connection with the proceedings for the offence, he has been arrested in pursuance of section 10.

PART III

DECISIONS WHERE BAIL REFUSED ON PREVIOUS HEARING

1. If the court decides not to grant the defendant bail, it is the court's duty to consider, at each subsequent hearing while the defendant is a person to whom section 6 applies and remains in custody, whether he ought to be granted bail.

2. At the first hearing after that at which the court decided not to grant the defendant bail he may support an application for bail with any argument as to fact or law that he desires (whether or not he has advanced that argument previously).

3. At subsequent hearings the court need not hear arguments as to fact or law which it has heard previously.

PART IV
INTERPRETATION

1. For the purposes of this Schedule the question whether an offence is one which is punishable with imprisonment shall be determined without regard to any enactment prohibiting or restricting the imprisonment of young offenders.

2. References in this Schedule to previous grants of bail in criminal proceedings include references to bail granted before the coming into force of this Act and so as respects the reference to an offence committed by a person on bail in relation to any period before the coming into force of paragraph 4 of Part I.

[Schedule 1 amended by 2010 : 32 s. 3 effective 29 June 2010]

SCHEDULE 2

(section 9 (13))

PROCEDURE ON RECONSIDERATION OF A DECISION TO GRANT BAIL

- 1 An application under section 9(1) shall—
 - (a) be made in writing;
 - (b) contain a statement of the grounds on which it is made;
 - (c) specify the offence which the proceedings in which bail was granted were connected with, or for;
 - (d) specify the decision to be reconsidered (including any conditions of bail which have been imposed and why they have been imposed); and
 - (e) specify the name and address of any surety provided by the person to whom the application relates to secure his surrender to custody.

- 2 Where an application has been made under section 9(1)—
 - (a) the Senior Magistrate or the Registrar of the Supreme Court, as the case may be, shall fix the time and place for the hearing of the application; and
 - (b) shall—
 - (i) give notice of the application and of the date, time and place so fixed in the prescribed form to the person affected; and
 - (ii) send a copy of the notice to the prosecutor who made the application and to any surety specified in the application.

- 3 The time fixed for the hearing shall be not later than 72 hours after receipt of the application,

- 4 In reckoning for the purpose of paragraph 3 any period of 72 hours, no account shall be taken of any public holiday.

- 5 Service of a notice to be given under paragraph 2 to the person affected may be effected by delivering it to him.

- 6 At the hearing of an application under section 9(1) the court shall consider any representations made by the person affected (whether in writing or orally) before taking any decision under that section with respect to him; and, where the person affected does not appear before the court, the court shall not take such a decision unless it is proved to the satisfaction of the court that the notice required to be given under paragraph 2 was served on him before the hearing.

7 Where the court proceeds in the absence of the person affected in accordance with paragraph 6—

- (a) if the decision of the court is to vary the conditions of bail or impose conditions in respect of bail which has been granted unconditionally, the Senior Magistrate or the Registrar of the Supreme Court, as the case may be, shall notify the person affected in writing;
- (b) if the decision of the court is to withhold bail, the order of the court under section 9(5)(b) (surrender to custody) shall be signed by the magistrate or, as the case may be, the Registrar, issuing it.

8 Service of any of the documents referred to in paragraph (7) may be effected by delivering it to the person to whom it is directed or by leaving it for him with some person at his last known or usual place of abode.

SCHEDULE 3

(section 15(1))

REPEALS

Short Title	Extent of Repeal
Criminal Code Act 1907	Section 471. Section 472. Section 473. Section 474. In section 486 the words “with sufficient sureties”. In section 501(3) the words from “and may, in a proper case,” to the end of the subsection.
Indictable Offences Act 1929	In section 14(1) the words from “upon his entering” to the end of the subsection. Sections 14(2), (3), (4) and (5). In section 16 the words “in the manner hereinafter mentioned”. Section 21. Section 21(2). Section 22. Section 24. Section 27. Section 28.
Summary Jurisdiction Act 1930	Section 5. Section 6. In section 19(2) the words from “by reason” to the end.
Stalking Act 1997	Section 20
Domestic Violence (Protection Orders) Act 1997	Section 26

SCHEDULE 4

(section 15(2))

TRANSITIONAL PROVISIONS

1. (1) Without prejudice to section 16 of the Interpretation Act 1951 (effect of repeals), nothing in the amendments or repeals effected by section 15 of and Schedule 3 to this Act shall affect the application of the enactments repealed thereby in relation to recognizances entered into or security given by persons granted bail before the appointed day and the recognizances of any sureties for them.

(2) Nothing in those amendments or repeals shall, in particular, affect the doing of any of the following things after the appointed day, that is to say—

- (a) the enforcement of the recognizance of such a person in the event of a breach of recognizance after the appointed day;
- (b) the exercise of any power to issue and the execution of a warrant for the arrest of such a person for breach of his recognizance after the appointed day;
- (c) the exercise of any power to enlarge the recognizance of such a person and of any surety for him to a later time in the absence of that person and his surety (if any);
- (d) the exercise of any power to vary any conditions on which a person was granted bail before the appointed day or to reduce the amount in which he or any surety is to be bound or to discharge or dispense with any of the sureties;

and no application shall be made under section 4(7) for the variation of conditions of bail so granted or for the imposition of conditions in respect of bail so granted.

2. Where, before the appointed day, a court has—

- (a) given a direction that the recognizance of a person to whom it has granted bail may be entered into before another court or any person; or
- (b) endorsed a warrant for the arrest of a person with a direction that he be released on his entering into such a recognizance as is specified in the endorsement,

the recognizance may be entered into and taken after the appointed day in accordance with the direction and paragraph 1 shall apply to such a recognizance as it applies to a recognizance entered into before the appointed day.

3. Where a person has been granted bail before the appointed day and his recognizance (and that of any surety for him) is conditioned for his appearance before a court from time to time, then, on his first appearance before a court after the appointed day

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the recognizance of that person or any surety for him shall, as directed by the court, either be discharged or continue in force.

4. In this Schedule “the appointed day” means the day appointed under section 1 of this Act for it to come into force.

[Assent Date: 3 August 2005]

[Operative Date: 15 January 2006]

[Amended by:

2008 : 18

2010 : 32

2011 : 19

2011 : 50

2012 : 28

2015 : 38]