

Second Draft 2019-04-01

OBJECTS AND REASONS

This Bill would amend the *Bail Act*, Cap. 122A to restrict the grant of bail where a person is charged with certain serious offences.

Arrangement of Sections

1. Short title
2. Amendment of section 5 of Cap. 122A
3. Insertion of new section 5A in Cap. 122A

BARBADOS

A Bill entitled

An Act to amend the *Bail Act*, Cap. 122A.

WHEREAS it is provided *inter alia* in section 49 of the *Constitution* that Parliament may by an Act of Parliament passed by both Houses, alter Chapter III of the *Constitution* if the Act is supported by the votes of not less than two-thirds of all the members of each House:

AND WHEREAS section 49(6) of the *Constitution* provides *inter alia* that no Act of Parliament shall be construed as altering the *Constitution* unless it is stated in the Act that it is an Act for that purpose:

AND WHEREAS it is necessary in the public interest and for the purposes of maintaining law and order that section 13(3) of the *Constitution* be altered to such extent necessary to give effect to this Act:

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

Short title

1. This Act may be cited as the *Bail (Amendment) Act 2019*.

Amendment of section 5 of Cap. 122A

2. *Section 5 of the Bail Act, in this Act referred to as the principal Act, is amended*

- (a) *in subsection (1) by deleting paragraph (b) and substituting the following:*

“(b) the court is satisfied that the defendant should be kept in custody

- (i) for his own protection;
- (ii) for the protection of the community; or
- (iii) if he is a child or young person, for his own welfare;”;

- (b) *in subsection (2) by*

- (i) *deleting the word “and” at the end of paragraph (d);*
- (ii) *deleting the full-stop at the end of paragraph (e) and substituting the words “; and”;*

(iii) *inserting the following paragraph after paragraph (e):*

“(f) the need to maintain confidence in the administration of justice taking into consideration the matters mentioned in paragraphs (a), (b) and (c) of this subsection.”; and

(c) *deleting subsection (4).*

Insertion of new section 5A in Cap. 122A

3. *The principal Act is amended by inserting the following new section after section 5:*

“Bail in the case of persons charged with serious offences

5A.(1) Subject to subsection (2), a person charged with

(a) murder;

(b) treason;

(c) high treason; or

(d) an offence under the *Firearms Act*, Cap. 179, which is punishable with imprisonment for 10 years or more

shall not be granted bail unless a period of 24 months has expired after that person was charged.

(2) Notwithstanding subsection (1), bail may be granted by the High Court where

(a) any person is charged with murder in circumstances connected with the discharge of that person’s official duties;

(b) the court is of the view that the strength of the evidence suggests that the accused did not commit the offence with which he is charged; or

- (c) the court is satisfied on the evidence presented that the accused would be able to rely on the defence of self defence.
- (3) An application for bail by a person who is charged with an offence mentioned in subsection (1) shall be heard by the Chief Justice or a Judge of the High Court assigned by the Chief Justice.
- (4) No application for bail by a person who is charged with an offence mentioned in subsection (1) shall be heard by the High Court unless
 - (a) a period of 72 hours has expired after the application for bail is made to the Court; and
 - (b) the Court is satisfied that notice of the application was served on the prosecution.
- (5) Where
 - (a) bail is granted by the High Court to a person in the circumstances mentioned in subsection (2); or
 - (b) bail is granted by the High Court to a defendant after bail is withheld for the period mentioned in subsection (1),
the Chief Justice or Judge, as the case may be, shall at the time of making the decision,
 - (i) give reasons in writing for his decision; and
 - (ii) give a copy of the reasons for the decision to the defendant and the prosecution.
- (6) Where bail is granted by the High Court to a defendant in the circumstances mentioned in subsection (5)(a) or (b), there shall be a right of appeal by the prosecution to the Court of Appeal against the decision of the Court.

(7) An appeal to the Court of Appeal under subsection (6) shall be heard by the Chief Justice or by a Justice of Appeal assigned by the Chief Justice as is appropriate in the particular circumstances.”.

Read three times and passed the House of Assembly this
day of _____, 2019.

Speaker

Read three times and passed the Senate this _____ day of
, 2019.

President

EXPLANATORY MEMORANDUM

Bail (Amendment) Bill, 2019

The Preamble

The Preamble would provide the necessary background and context which makes it necessary for section 13 (3) of the *Constitution* to be amended.

Clause 2

Paragraph (a) is not a substantive provision. It will correct a numbering error since the provisions are sub-paragraphs but are wrongly numbered as paragraphs. The correction will allow for the provisions to be correctly cited.

Paragraph (b) provides a new ground which the Court must consider in exercising its discretion to grant or withhold bail.

Clause 3

Clause 3 provides for the insertion of a new section which restricts the grant of bail to persons charged with serious offences.

Subclause (1)

This provision prohibits the grant of bail to persons who are charged with any of the offences specified in subsection (1) of the new section 5A until after the expiration of 24 months following the bringing of charges.

Subclause (2)

This provision provides an exception in the case where a person is charged with the offence of murder if the offence is committed when the person was carrying out his official duties. The provision is widely drafted to prevent an injustice to

any person, including a security guard or a watchman who kills a person when carrying out his lawful duties.

Subclause (3)

This provision provides for bail applications for serious offences to be heard by the Chief Justice or by a Judge assigned by Chief Justice.

Subclause (4)

This provision modifies the practice and procedure relating to bail so as to facilitate appeals by the prosecution.

Subclause (5)

This provision requires the court to give reasons for bail decisions so as to facilitate appeals by the prosecution.

Subclause (6)

This provision gives the Prosecution (and not the accused) a new right of appeal to the Court of Appeal.