
CHAPTER 103**BAIL**

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CHAPTER 103

BAIL

An Act to consolidate the law relating to the release from custody of accused persons in criminal proceedings and for other matters connected thereto.

20 cf 1994
27 cf 1996
15 cf 2000
21 cf 2006
23 cf 2007

[Assent 20th September, 1994]
[Commencement 22nd September, 1994]

1. This Act may be cited as the Bail Act. Short title.
2. In this Act — Interpretation.

“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;

“Court” includes a Judge of the Supreme Court, a Judge of the Court of Appeal, a Magistrate or a Coroner;

“record” means the record of the decision of the Court, or Police Officer made in pursuance of subsection (1) of section 5;

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

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

3. (1) Subject to section 4 and except as provided in Part A of the First Schedule, bail may be granted, notwithstanding the provisions of any other law, to a person —

Discretionary
grant of bail.
27 cf 1996, s 2

- (a) who is accused of an offence when —
 - (i) he appears or is brought before a Magistrate’s Court or the Supreme Court

in the course of or in connection with proceedings for that offence; or

(ii) he applies to a Court for bail in connection with the proceedings for that offence;

(b) who, having been committed to stand trial or having had a bill of indictment preferred against him, has not been arraigned before the Supreme Court in accordance with section 148 of the Criminal Procedure Code within six months after the date upon which that person was committed to stand trial or from which the bill of indictment was preferred;

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(c) who, having been convicted of an offence, appears or is brought before a Court to be dealt with under section 124(6) of the Penal Code; or

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(d) 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 only if the Court does not intend to impose a custodial sentence.

(2) Where any person who has been convicted and sentenced to a term of imprisonment gives notice in accordance with the provisions of the Criminal Procedure Code of his intention to appeal against the conviction or sentence, the magistrate's court by which he was so convicted or the court to which the appeal lies, may, upon application being made by or on behalf of such person, if the court thinks fit, having regard to —

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(a) the character of the person convicted;

(b) the nature and seriousness of the offence for which such person was convicted;

(c) the improbability of such person absconding or committing the same or a like offence if he is released from custody; and

(d) such other exceptional circumstances which appear to the court to be relevant,

order that such person be released from custody with or without a surety or sureties until such time as the appeal is determined, abandoned or withdrawn:

Provided that nothing in this subsection contained shall be deemed —

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- (a) to require the release of any person liable to be detained in custody for some matter other than that in respect of which the appeal is being made;
 - (b) to enable a court to grant bail to the convicted person if that person would not be granted bail under the other provisions of this Act prior to his conviction. *27 cf 1996, s 2*

4. (1) Notwithstanding any other enactment, where any person is charged with an offence mentioned in Part B of the First Schedule, the Court shall order that that person shall be detained in custody for the purpose of being dealt with according to law, unless the Court is of the opinion that his detention is not justified, in which case, the Court may make an order for the release, on bail, of that person and shall include in the record a statement giving the reasons for the order of release on bail: *No right to bail. 27 cf 1996, s 3 Part B of First Schedule.*

Provided that, where a person has been charged with an offence mentioned in Part B of the First Schedule after having been previously convicted of an offence mentioned in that Part, and his imprisonment on that conviction ceased within the last five years, then the Court shall order that that person shall be detained in custody.

- (2) Notwithstanding any other enactment — *15 cf 2000*
 - (a) a person charged with an offence mentioned in Part C of the First Schedule; or *Part C of First Schedule.*
 - (b) a person who has been convicted and sentenced to a term of imprisonment in respect of those offences mentioned in Part D of the First Schedule who gives notice of his intention to appeal in accordance with the Criminal Procedure Code Act, against such conviction, *Part D of First Schedule.*

shall not be granted bail:

Provided that where there are exceptional circumstances, a court may grant bail to a person referred to in paragraph (b).

(3) Where the appeal in respect of a person described under paragraph 2(b) is not heard within a period of six months from the date of the conviction that person shall be entitled to apply to the Court of Appeal for bail pending the outcome of such appeal. *15 cf 2000*

(4) Notwithstanding the foregoing provisions of this section or any other enactment, the provisions of

subsection (1) relating to bail, shall apply to any person charged with —

- Ch 228 (a) conspiracy to export dangerous drugs, contrary to sections 14(7) and 29(1) of the Dangerous Drugs Act;
- Ch 228 (b) conspiracy to import dangerous drugs, contrary to sections 15(6) and 29(1) of the Dangerous Drugs Act; or
- Ch 228 (c) conspiracy to possess dangerous drugs with intent to supply, contrary to section 22(1) and (2)(a) and section 29(1) of the Dangerous Drugs Act,

unless the Attorney-General in writing directs that a prosecution be commenced in respect of any offence mentioned in paragraphs (a) to (c), in which case the provisions of subsection (2) relating to bail shall apply to the person to whom the prosecution relates.

(5) The fact that an accused person has not been previously convicted of any offence, shall not *ipso facto* constitute a cause for releasing that accused person on bail.

Record of
decision as to
bail

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

- (a) a Court or a police officer grants bail in criminal proceedings;
- (b) a Court refuses bail in criminal proceedings in relation to a person referred to in paragraph (a) of subsection (1) of section 3;
- (c) a Court or a police officer appoints a time or place for a person to whom bail is granted in criminal proceedings to surrender to custody; or
- (d) a Court varies any conditions of bail or imposes conditions in respect of bail in criminal proceedings,

27 *cf* 1996, s 4

that Court or police officer shall make a record of the decision and, where requested to do so by the person in relation to whom the decision was taken, shall cause that person 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 Court that issued the warrant.

6. Where a Magistrate's Court —

- (a) grants bail in criminal proceedings over an objection to bail by or on behalf of the police;
- (b) refuses bail in criminal proceedings;
- (c) imposes conditions in granting bail in criminal proceedings; or
- (d) varies any conditions of bail or imposes conditions in respect of bail in criminal proceedings,

Reasons must be given for grant or refusal of bail.
27 cf 1996, s 5

in relation to an accused person referred to in paragraph (a) of subsection (1) of section 3, or a convicted person referred to in subsection (2) of section 3, as the case may be, then the Magistrate shall, with a view to enabling that accused person or convicted person or the police to consider making an application in the matter to the Supreme Court, give reasons for granting or refusing bail or for imposing or varying the conditions, as the case may be.

7. Where a Magistrate's Court inquiring into or trying an offence alleged to have been committed by a person refuses bail, the court shall inform that person that he may apply to the Supreme Court to be granted bail, or to have any conditions to which the bail is subject varied.

Accused to be informed of his right to apply to Supreme Court for bail.

8. (1) Where a Magistrate's Court grants or refuses bail in criminal proceedings or imposes conditions in granting bail in criminal proceedings, the Supreme Court may, on application by an accused person or the police, grant or refuse bail or vary the conditions.

Power of Supreme Court to grant, refuse or vary conditions of bail.

(2) Where a Magistrate grants bail to an accused person or a convicted person he shall where notice is given by or on behalf of the police of the intention to apply to the Supreme Court for a review of the decision remand the accused person or convicted person, as the case may be, into custody and order him to be brought before a judge at such time and place as the Registrar may direct for the hearing of the review by the Supreme Court which shall not be later than the next two sitting days of that Court.

27 cf 1996, s 6

(3) Where the Supreme Court grants an accused person bail under subsection (1), the Court may direct that person to appear at a time and place which the Magistrate's Court could have directed and the recognisance of any surety shall be conditioned accordingly.

(4) Where the Supreme Court refuses an accused person bail under subsection (1) and the accused person is not then in custody, the Court shall issue a warrant for the arrest of the accused person, who shall be brought before a Magistrate's Court and shall be remanded in custody.

(5) The powers of the Supreme Court under this section are without prejudice to the jurisdiction vested in the Supreme Court under any other law.

Appeal to Court
of Appeal.

21 *cf* 2006, s 2
23 *cf* 2007

23 *cf* 2007, s 2

8A. (1) Where the Supreme Court grants or refuses a person bail, or refuses to revoke bail, the prosecution or the person, as the case may be, shall have a right of appeal to the Court of Appeal.

(2) An appeal shall be filed within two days of the making of the decision, the subject matter of the appeal, and pending the hearing of an appeal against an order admitting an accused person to bail that order shall be suspended.

General
provisions
relating to bail.

9. (1) When bail is granted to a person to whom section 3 applies, no condition may be attached unless it is considered necessary for the purpose of preventing absconding, the commission of an offence on bail or interference with witnesses, or for the purpose of obtaining medical or other reports.

(2) A person to whom bail is granted in criminal proceedings is under a duty to surrender to custody, and that duty is enforceable in accordance with section 10 of this Act.

(3) A Court may require any person applying for bail to provide, before release on bail, one or more sureties to secure that person's surrender to custody.

(4) Where it appears that the applicant for bail is unlikely to remain in The Bahamas until the time appointed for him to surrender to custody, he may be required, before release on bail, to give security for his surrender to custody and the security may be given by him or on his behalf.

(5) Where a parent or guardian of a child or young person consents to be surety for the child or young person for the purposes of this section, the parent or guardian may be required to ensure that the child or young person complies with any condition imposed on him except that —

(a) no condition shall be imposed on the parent or the guardian of a young person where it appears that the young person will attain the age of

eighteen before the time to be appointed for him to surrender to custody; and

- (b) the parent or guardian shall not be required to ensure compliance with any condition to which his consent does not extend and shall not in respect of those conditions to which his consent does extend, be bound in a sum greater than five hundred dollars.

(6) Where a Court has granted bail in criminal proceedings, the Court 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, in respect of bail which it has granted unconditionally, impose conditions.

10. (1) Any person who having been released on bail in criminal proceedings fails without reasonable cause to surrender to custody, is guilty of an offence.

Offence of absconding by person released on bail.

(2) Any person who —

- (a) has been released on bail in criminal proceedings; and
- (b) having no reasonable cause therefor, has failed to surrender to custody,

fails to surrender to custody at the appointed place as soon after the appointed time as is reasonably practicable, he is guilty of an offence.

(3) It shall be for the accused to prove that he has reasonable cause for his failure to surrender to custody.

(4) A failure to give to a person who is 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) or (2), a document purporting to be a copy of the part of the record which relates to the time and place appointed for the person specified in the record to surrender to custody and duly certified to be a true copy of that part of the record shall be evidence of the time and place appointed for that person to surrender to custody.

(6) For the purposes of subsection (5) —

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- (a) the copy of the 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; and
 - (b) “appropriate officer of the Court” is —
 - (i) in the case of a Magistrate’s Court, the Magistrate’s clerk or such other officer as may be authorised by a Magistrate to act for the purpose;
 - (ii) in the case of the Supreme Court and the Court of Appeal, the Registrar or such other officer as may be authorised by him to act for the purpose.

Penalty for absconding.

11. (1) An offence under subsection (1) or (2) of section 10 is punishable on summary conviction.

(2) A person who is convicted of any offence under subsection (1) or (2) of section 10 is liable to imprisonment for a term of two years.

Liability to arrest for absconding or breaking conditions of bail.

12. (1) Where 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) Where 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 where —

- (a) the police officer has reasonable grounds for believing that that person is not likely to surrender to custody;

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- (b) the police officer has reasonable grounds for believing that that person has committed another offence while on bail;
 - (c) 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
 - (d) in a case where that person was released on bail with one or more surety or sureties, 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) shall be brought as soon as practicable, and in any event within forty-eight hours after his arrest —

- (a) before a Magistrate; or
- (b) where a person is arrested within forty-eight hours of the time appointed for him to surrender to custody, before the Court at which he is to surrender to custody.

(5) Subject to paragraphs (a) and (f) of Part A of the First Schedule where a Magistrate before whom a person is brought under subsection (4) is of the opinion that that person —

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

the Magistrate may, subject to subsection (6), remand him in custody or commit him to custody, as the case may require or, alternatively, grant him bail subject to the same or different conditions, save that where the Magistrate is not of any such opinion, the Magistrate shall grant him bail subject to the same conditions, if any, as were originally imposed.

(6) Where the person brought before the Magistrate under subsection (4) is a child or young person and the Magistrate does not grant him bail, subsection (5) shall have effect subject to the provisions of section 36(1) of the Children and Young Persons (Administration of Justice) Act.

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Bail with sureties.

13. (1) This section applies where a person is granted bail in criminal proceedings on condition that the person 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, the Court shall —

- (a) have regard, amongst other things, to the surety's —
 - (i) profession, occupation, trade or business;
 - (ii) character and any previous convictions of his; and
 - (iii) proximity, whether in point of kinship, place or residence or otherwise, to the person for whom he is to be a surety; and

Second Schedule.

- (b) require the surety to make a statutory declaration in the form set out in the Second Schedule respecting his financial and other assets.

(3) Where a Court grants a person bail in criminal proceedings under subsection (1), but is unable to release such person 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 recognisance of the surety to be entered into subsequently.

(4) A recognisance of the surety under subsection (3) 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 a Magistrate's Court, before any Magistrate or Justice of the Peace;
- (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, before the Registrar or an officer designated by him for that purpose.

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

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- (a) the Court which fixed the amount to the recognisance in which the surety was to be bound; or
 - (b) a Magistrate's Court for the district in which he resides,

for that Court to take this recognisance and that Court shall, if satisfied of the surety's suitability, take his recognisance.

(6) Where, in pursuance of subsection (4), a recognisance is entered into otherwise than before the Court that fixed the amount of the recognisance, the same consequences shall follow as if it has been entered into before the Court.

14. (1) Where a person has given security in pursuance of section 9(4), and the Court is satisfied that the person failed to surrender to custody, then, unless it appears that he had reasonable cause for his failure, the Court may order the forfeiture of the security.

Forfeiture of security or recognisance.

(2) Where a 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.

15. (1) The provisions of this Act shall be in addition to any other provision relating to bail in criminal proceedings under the Criminal Procedure Code and any other written law.

Savings.
Ch. 91.

(2) Nothing contained in section 3 shall derogate from any order for bail made prior to the coming into operation of this Act.

FIRST SCHEDULE (Section 3)

PART A

27 *cf* 1996, s 7

The Court shall deny bail to a defendant in any of the following circumstances —

- (a) where 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 —

Ch. 211.

- (i) fail to surrender to custody or appear at his trial;
 - (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) where the Court 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) where he is in custody in pursuance of the sentence of a Court or any authority acting under the Defence Act;
- (d) 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 for want of time since the institution of the proceedings against him;
- (e) where, having been released on bail in or in connection with the proceedings for the offence, he is arrested in pursuance of section 12;
- (f) while he is released on bail and is charged subsequently either with an offence similar to that in respect of which he was so released or with an offence which is punishable by a term of imprisonment exceeding one year.

*27 cf 1996, s 7***PART B (Section 4(1))**

- Causing grievous bodily harm — section 270, Ch. 84;
- Causing maim or any dangerous harm — section 272, Ch. 84;
- Attempted Murder — section 292, Ch. 84;
- Manslaughter — section 293, Ch. 84;
- Robbery — section 339(1), Ch. 84, or Attempted Robbery;
- Conspiracy to commit Robbery — sections 339(1) and 89(1), Ch. 84;
- Housebreaking — section 362, Ch. 84;
- Burglary — section 363, Ch. 84;
- Conspiracy to commit Burglary — sections 363 and 89(1), Ch. 84;
- Unlawful Entry by Night — section 364, Ch. 84;
- Possession of Firearm designed to discharge explosive matter — section 30(1)(a), Ch. 213;
- Possession of Automatic Weapons — section 30(1)(b), Ch. 213;

Possession of Firearm or Ammunition with intent to endanger life or cause serious injury to property — section 33, Ch. 213;

Possession of Firearm with intent to commit an indictable offence — section 34(1), Ch. 213;

Unlawful Shortening of guns — section 36, Ch. 213;

Possession of Dangerous Drugs with intent to supply — section 22, Ch. 228;

Any offence under any of the following sections of the Sexual Offences and Domestic Violence Act, Ch. 99:

6 (rape), 10 (sexual intercourse with a person under fourteen years), 12 (sexual intercourse with a person suffering from a mental disorder), 13 (incest) and 14 (sexual intercourse with a dependant).

PART C (Section 4(3))

*27 cf 1996, s 7
15 cf 2000*

Kidnapping — section 282, Ch. 84;

Conspiracy to commit Kidnapping — sections 282 and 89(1), Ch. 84;

Murder — section 291, Ch. 84;

Conspiracy to commit Murder — sections 291 and 89(1), Ch. 84;

Abetment to Murder — sections 86 and 307, Ch. 84;

Armed Robbery — section 339(2), Ch. 84;

Conspiracy to commit Armed Robbery — sections 339(2) and 89(1), Ch. 84;

Abetment to Armed Robbery — sections 86 and 339, Ch. 84;

Treason — section 389, Ch. 84;

Conspiracy to commit Treason — sections 389 and 89(1), Ch. 84.

PART D (Section 4(2))

Possession of Dangerous Drugs with intent to supply — section 22, Ch. 228;

15 cf 2000

Possession of prohibited weapons and ammunition — section 30, Ch. 213;

Possession of Firearm or Ammunition with intent to endanger life or cause serious injury to property — section 33, Ch. 213;

Possession of Firearm with intent to commit an indictable offence — section 34(1), Ch. 213;

Unlawful shortening of guns — section 36, Ch. 213;

15 *cf* 2000

Any offence mentioned in the Third Schedule to the Criminal Procedure Code, Ch. 91.

SECOND SCHEDULE (Section 13(2)(b))
STATUTORY DECLARATION TO BE MADE BY A
SURETY OR SURETIES

Commonwealth of The Bahamas

Island of

I the undersigned CD of/GH of
 having agreed to offer myself/*ourselves as surety for AB
 of..... /defendant in the case Crown vs acknowledge to
 owe to the Crown the sum of to be levied on
 my/*our several movable and immovable property if the said
 AB fails in the condition of the recognisance to be entered
 before Magistrate/*Justice.

And for that purpose I/*we, the undersigned hereby solemnly
 declare —

- (a) that my/*our immovable and movable property including
 other financial assets consist of the following:
 - (i) Particulars of immovable property:
 - Description of immovable property, date of the Deed
 and name and address of the parties to the Deed;
 - (ii) Estimated value of immovable property;
 - (iii) Bank Balances: Name of the Bank, Account Number
 and Amount;
 - (iv) Any other movable property and its value;
- (b) *that the immovable property specified in subparagraph
 (a)(i) above is owned by me/*us free from any
 encumbrances, or
 *that the immovable property specified in subparagraph
 (a)(i) above is under mortgage, hypothecated, etc., in
 consideration of ;
- (c) that I/*we have/*have not stood surety/sureties on the
 consideration of the aforesaid immovable/movable property
 in the case/cases noted below;
- (d) that I/*we have/*have not been convicted of any criminal
 offence. Further a criminal charge is pending against

* Delete whatever is inapplicable.

me/*us. /*No criminal charge is pending against me/*us.

Signed CD

..... GH

Taken before me thisday of 20.....

Signed
Magistrate or Justice