

ANTIGUA AND BARBUDA



BAIL BILL, 2016

NO. OF 2016

ANTIGUA AND BARBUDA
BAIL ACT, 2016
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ANTIGUA & BABUDA

BAIL ACT, 2016

BILL FOR

An Act to provide for bail with respect to persons charged with criminal offences.

ENACTED by the Parliament of Antigua and Barbuda as follows-

PART I

PRELIMINARY

1. Short Title and commencement

(1) This Act may be cited as the Bail Act, 2016;

(2) This Act comes into operation on such date as the Minister may by order appoint and publish in the *Gazette*.

2. Interpretation

In this Act-

“bail” means

- (a) bail grantable in or in connection with proceedings for an offence to a person who is accused of or in convicted of the offence;
- (b) bail granted in connection with an offence to a person who is under arrest for an offence and for whose arrest for the offence a warrant endorsed for bail is issued;
- (c) bail grantable under the law, including common law, for the fine being in force;

“conviction” includes

- (a) a finding of guilt;
- (b) a finding that a person is not guilty by reason of insanity;
- (c) a finding that a person is guilty but is suffering from diminished responsibility;

- (d) a conviction for an offence for which an order is made placing the offender on probation or discharging him absolutely or conditionally;
- (e) a finding under the Magistrate's Code of Procedure Act, Cap. 255 that the person in question did the act or made the omission charged;

and "convicted" must be construed accordingly;

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

"court" means a Judge of the High Court, of the Court of Appeal 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;

"Magistrate's Court Rules" means Rules made under section 250 of the Magistrate Code of Procedure Act; Cap. 255;

"offence" includes an alleged offence;

"police officer" means a police officer [of the rank of inspection or above that rank];

"surrender to custody" means

- (a) in relation to person released on bail, surrendering himself into custody of the court or of the police officer, according to the requirements of bail, at the time and place for the time appointed for him to do so;
- (b) in relation to an enactment which refers to the person bailed appearing before the court; surrendering of that person before the court;

"vary" in relation of bail means imposing further conditions after bail is granted or varying or rescinding conditions;

(2) Where an enactment; which came into force whether before or after the commencement, relates to bail in criminal proceedings, refers to a person being bailed appealing 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.

PART II

JURISDICTION

3. Application of this Act

- (1) This Act applies to

- (a) an offence committed in Antigua and Barbuda or elsewhere; and
- (b) an extraditable offence under the Extradition Act, 1993.

(2) Jurisdiction under this Act rests with judges, magistrates and police officers acting strictly in accordance with the powers conferred on each such functionary by this Act, or by any other enactment, with respect to the grant of bail.

4. Exclusive Jurisdiction for certain offences

(1) The jurisdiction to hear applications for bail and to grant such bail shall vest exclusively in a Judge of High Court or of the Court of Appeal.

(2) This section applies to the offences specified in the First Schedule.

PART III

RIGHT TO BAIL AND APPLICATIONS THERE FOR

5. Entitlement to bail

(1) Subject to this Act, every person who is charged with an offence is entitled to be granted bail.

(2) Subject to section 7, bail shall be granted to a defendant who is charged with an offence which is not punishable by imprisonment, which includes a fine or imprisonment imposed by any enactment.

(3) A person charged with murder, an offence specified in the First Schedule may be granted bail only by a Judge.

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

6. Powers of High Court in relating to bail

(1) Notwithstanding any power of 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;
- (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.

(2) Where the High Court grants bail to a defendant under subsection (1), that court 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 the Magistrate's Court and shall be remanded in custody.

7. Circumstances when bail may be denied

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

- (a) the judge, magistrate or police officer is satisfied that there are substantial grounds for believing that the defendant, if released on bail would-
 - (i) fail to surrender to custody;
 - (ii) commit an offence while on bail;
 - (iii) interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person;
- (b) the defendant is in custody in pursuance of the sentence of a court or any other authority acting under an enactment;
- (c) the judge, magistrate or police officer is satisfied that it has not been practicable to obtain sufficient information for the purpose of the decisions required by this section for want of time since the institution of the proceedings against that defendant;
- (d) the defendant, having been released on bail in or in connection with the proceedings for the offence, is arrested pursuant to section 22 ;
- (e) the defendant is charged with an offence alleged to have been committed while he was released on bail;
- (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 to make the report without keeping the defendant in custody.

(2) In deciding whether or not any of the circumstances specified in subsection (1) (a) exists in relation to the defendant; the judge, magistrate or the police officer shall take into account:

- (a) the nature and seriousness of the offence;
- (b) the defendant's character, antecedents, association and community ties;

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

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

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

- (a) it appears to the court or a police officer that having been previously granted bail in criminal proceedings, the defendant has failed to surrender to custody in accordance with his obligations under the grant of bail and there are reasonable grounds for believing that, in view of that failure, the defendant; if released on bail, would fail surrender to custody;
- (b) the court or the police officer is satisfied that the defendant should be kept in custody for his own protection or, where he is a child or young person for his own welfare;
- (c) the defendant is an custody in pursuance of a sentence of a court or any authority acting pursuant to any other enactment'
- (d) having been released on bail in or in connection with the proceedings for the offence, the defendant is arrested pursuant to section 22.

(5) For the purposes of this section-

- (a) references to previous grants of bail in criminal proceedings include a reference to bail granted prior to the commencement of this Act;
- (b) reference to a defendant being kept in custody or being in custody, include where a defendant is a child or young person, is being kept in a place of safety on some other place authorized by the law;
- (c) the question whether an offence is punishable with imprisonment shall be determined without any regard to any enactment prohibiting or restricting the imprisonment of young offenders or first offenders.

(6) Where the matter referred to in subsection (2) (e) is taken into account in relation to a defendant, the offence to which the bail application relates shall not be heard before the court which heard the application.

8. Restrictions on conditions of bail

(1) Where a defendant is granted bail, the conditions specified in subsection (2) and (3) of section 9 shall not be imposed unless it appears to the court, a magistrate or police officer that it is necessary to do so-

- (a) for the purpose of preventing the occurrence of any of the events referred to in section 7; or
- (b) to enable inquiries or a report to be made regarding the defendant's physical or mental condition.

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

9. General conditions respecting bail

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

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

(3) A person to whom bail is granted may be required to -

- (a) surrender all of his travel documents to the court;
- (b) inform the court if he intends to leave Antigua and Barbuda;
- (c) report at specified times and dates to a police station;
- (d) comply with such other requirements as appear to the court to be necessary to ensure that the person-
 - (i) surrenders to custody;
 - (ii) does not commit an offence while on bail;
 - (iii) does not interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or to any other person;
 - (iv) makes himself available for the purpose of enabling inquiries or a report to be made of any medical examination to be made to assist the court in dealing with him for the offence.

(4) The requirements referred to in subsection (3) (d) may include the imposition of a curfew, in respect of any person to whom bail is granted, between the hours specified by

the court, requiring the person to remain within a specified locality during the hours so specified.

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

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

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

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

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

(7) Where a person has been granted bail in criminal proceedings, bail shall not be revoked unless such revocation is justifiable by virtue of section 21.

10. Exceptions to general conditions of bail under section 9

(1) Where the defendant is granted bail, the conditions mentioned in subsections (3) to (6) of section 9 shall not be imposed on him-

- (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 purposes of preventing the occurrence of any of the events mentioned in subsection (4) of section 9 or to enable inquiries or a report to be made into the defendant's physical or mental condition.

11. Police bail

(1) Where a person is taken into custody for an offence without a warrant, a police officer of the rank of inspector or above 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 punishable with imprisonment or time or imprisonment shall grant the person bail; and
- (b) if the offence is one punishable with imprisonment, may, unless, he offence appears to be 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 IV

THE RECORD REGARDING BAIL APPLICATIONS

12. Record of decision on bail applications

- (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 ,or an officer of the court or a police officer appoints a time and place or a different time or place, for a person granted bail to surrender to custody;
 - (d) a court varies any condition of bail or imposes conditions of bail on imposes conditions in respect of bail,

that court, officer of the court or police officer shall make a record of the decision in the prescribed manner containing the prescribed particulars and, if required 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, pursuant to a direction of the Commissioner of Police.

PART IV

BAIL APPLICATIONS TO HIGH COURT

13. Reasons relating to bail

(1) A magistrate 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 grant 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.

14. Right to apply to the High Court for bail

(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; or
- (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.

(2) Where in criminal proceedings, after hearing on an application for bail from the defendant, a magistrate court remands a person in custody under sections 58, 62, or 66 of the Magistrate's Code of Procedure Act Cap.255, 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 arguments on that application from the defendant;
- (b) the court has previously heard such arguments on the application from the defendant that it is satisfied that there has been a change in his circumstances or the new circumstances 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 issued.

(5) In this section “prescribed” means by rules made under this Act.

15. Further hearing respecting bail

Where the court denies bail to a defendant-

- (a) the court shall at each subsequent hearing consider whether the defendant should be granted bail if he is still in custody;
- (b) the defendant may support an application with any arguments as to fact or law that he wishes;
- (c) the court at subsequent hearing has no obligation to hear any argument as to fact or law that it heard previously.

16. Further powers of the High Court respecting bail

(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 conditions of bail.

(2) Where the High Court grants bail to a defendant bail under subsection (1), it may direct him to appear at a time and place which the magistrate 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.

17. Prosecution’s right of appeal

(1) In proceedings before a magistrate’s court in which a person is charged with an offence punishable by a term of imprisonment for 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 if an objection to the granting of bail is made by the prosecution before the magistrate’s court grants bail.

(2) Where the prosecution wishes to exercise the right to appeal under subsection (1)-

- (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 two hours of the conclusion of the 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 the appeal.

(4) The hearing of the appeal under subsection (1) against a decisions of the magistrate 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 the appeal by the prosecution under this section such appeal shall be by way of re-hearing.

PART VI

SURETIES SECURITY AND CONNECTED MATTERS

18. Bail with sureties

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

(2) In considering the suitability of a proposed surety, the court must have regard 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; and
- (d) require the surety to make a statutory declaration in the form set out in the Second Schedule.

(3) Where the court grants bail to a defendant under subsection (1), but—

- (a) is unable to release the defendant because no surety or no 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 on behalf of the person committed and after hearing fresh evidence-
 - (i) reduce the amount in which it is purposed that a 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 description of persons as the court may specify, or, if it makes no such order, before any of the following person:

- (a) where the decision was taken by a magistrate, before the magistrate or 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 Court 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 of the High Court, 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;
- (b) the persons by whom a recognizance may be enforced; or
- (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's not satisfied with 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 to take his recognizance; and that court shall, if satisfied of the surety's suitability take his recognizance.

(7) Where pursuant to 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.

19. Forfeiture of security

(1) Where a person has given security pursuant to section 9 (2) and a court is satisfied that he failed to surrender to custody, then, unless it appears that he had

reasonable cause for his own failure or there are other mitigating circumstances, the court may order forfeiture of the security.

(2) Where the court order the forfeiture of a security under subsection (1), the court may declare that the forfeiture extends to such amount less the full value of the security as it thinks fit to order.

(3) An order under subsection (1) shall, unless previously revoked, takes 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, in all the circumstances, have reasonable cause for his failure to surrender to custody; or
- (b) there are other mitigating circumstances which should be considered,

remit the forfeiture and 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 a 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 pursuant to subsection (4) after the 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 VI

OFFENCES

20. Indemnifying on agreeing to indemnify sureties

- (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,

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.

21. Absconding

(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 considers

- (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,

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 \$1000 or 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 of \$2500.00 or 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 a 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) “prescribed record” means the record of the decision of the court, or police officer as described in subsection (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) "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.

22. Arrest for absconding

(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, any Sunday, or a public holiday.

(6) A magistrate before whom a person is brought under subsection (4) may, subject to subsection (7), if he is 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.

23. Offence of agreeing to indemnify surety in criminal proceedings

(1) Where a person agrees with another person 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 are guilty of an offence.

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

(3) A person convicted of an offence under subsection (1) is liable on summary conviction to a fine not exceeding three thousand dollars or to imprisonment for a term not exceeding two years.

24. Offence to stand surety consideration of property being used as surety

(1) It is an offence for a person to stand surety on the consideration of property which, at the time of standing such surety is being used as security for the purpose of standing surety for any other person, unless the approval of the court is first obtained.

(2) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine of three thousand dollars or to imprisonment for two years, or to both.

PART IV
MISCELLANEOUS

25. Rules and regulations

The Minister may, after consultation with the Attorney General, if he is a separate person, make rules and regulations in order to give effect to the true intent and purpose of this Act.

FIRST SCHEDULE

(Sections 5(2) & 9(2))

Offences in respect of which a Judge of the High Court or the Court of Appeal has sole Jurisdiction to grant bail.

1. Murder
2. Treason
3. High Treason
4. Misprision of treason
5. Any indictable offence under the Firearms Act, cap. 171
6. Any indictable offence under the Electronic Crimes Act, 2013
7. Any indictable offence under the Telecommunications Act, 2016
8. Hijacking
9. Any offence for which death is the penalty fixed by law.

SECOND SCHEDULE

(Section 18)

**STATUTORY DECLARATION TO BE MADE BY A SURETY OR SURETIES
ANTIGUA ND BARBUDA**

I, the undersigned ofdo
solemnly and sincerely declare as follows:

I/We have agreed to offer myself/*ourselves as surety for/
Defendant in the case State/Police vs

In this regard I/*we acknowledge to owe to the State the sum of
.....to be levied on my/*our several movable and immovable property
if the said fails in the conditions of the
recognisance to be entered before Magistrate/Justice of
the Peace.

And for the purpose I/*we, the undersigned declare-

- (a) that my/*our movable and immovable property including other financial assets consist of the following:
 - (i) Particulars of immovable property-
Description of immovable property, date of Deed and name and address of the parties to the Deed
 -
 -
 -
 - (ii) Estimated value of immovable property
 - (iii) Bank balances-names of the bank, account 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) under mortgage, hypothecated, etc., in consideration of
..... ;

-
- (c) that I/*we have not stood surety/sureties on the consideration of the aforesaid immovable/movable property in any other case/cases which case/cases has/*have not been determines.
 - (d) that I/*we have not been convicted of any criminal offence and no criminal charge is pending against me/*us; or
 - (e) that I/*we or have been convicted of a criminal offence and have paid the fine or served the term of imprisonment and no criminal charge is pending against me/us.

I/we make this declaration conscientiously believing the same to be true and I/we am/are aware that of these is any statement in this declaration which is false in fact, which I/we know or believe to be false on do not know it to be true, I/we am/are may be liable to a fine or imprisonment or both.

Signed.....

.....
Declarant/Declarants

Bail Bill, 2016

NO. OF 2016

Passed by the House of Representatives
on the day of 2016.

Passed by the Senate on the
day of 2016.

Speaker

President

Clerk to the House of Representative

Clerk to the Senate

EXPLANATORY MEMORANDUM

In the process of drafting laws, there are some subjects which defy any elaborate scheme or the creation of real and substantial differences in the Bills. The matter of bail is in that category. It is common ground bail is concerned with the arrest and release of persons charged criminally, and in this context it is to be noted that between 1994 and 2012 four Commonwealth Caribbean States enacted a law on bail.

The jurisdictions are Trinidad and Tobago, Barbados, Jamaica, and St. Kitts and Nevis. And based on the foregoing there is much similarity in the provisions of the legislation. In the case of Trinidad and Tobago the statute is exceptional in that there is one provision which no other Parliament Commonwealth Caribbean has replicated in this regard. It is a total exclusion from the grant of bail to persons facing charges for murder, treason, piracy on hijacking and any offence for which death penalty is fixed by law. This was achieved by passing the Bill in Parliament by the majority necessary to amend the Constitution of Trinidad and Tobago. It is known as a non-textual amendment of the Constitution.

This development must be seen entirely in the context of the nature and extent of crimes in Trinidad and Tobago especially with regard to murder given the empirical evidence, it is clear that what was realised in Trinidad and Tobago is that some drastic action was required to deal with reality of murders.

It has emerged recently that the Prime Minister of Jamaica, Mr Andrew Holness, announced the intent of his Government to amend the law, being the Bail Act 2000, so that “such persons charged with murder will be ineligible from bail under certain circumstances”.

A Prime Minister never speaks loosely so that based on that announcement, it is reasonable to infer that the proposed amendment may now reach the level of the Trinidad and Tobago legislation on bail. The use of the word ineligible in these circumstances suggests that there are exceptions.

Prime Minister Holness’ statement provided fodder for the Jamaica Gleaner, and in an editorial of 12th May 2016 it sought to bring to the fore its concerns over the years in respect of bail. The article begins in this way:

“Without details of the Government’s proposal, we are unable to give our view one way or the other. However, readers of this column will know that we have often argued the point that bail is too easily granted to some accused individuals and that there needs to be a review of the law.”

It continues thus:

“There have been a myriad cases in which offenders on bail have committed serious crimes, including murder. Indeed, one infamous gang leader, who was released on bail only to be rearrested again and charged with a further murder three months later. But, surprisingly, he was granted bail again.

After all that, who can blame the police and indeed the public prosecutors for feeling frustrated? Indeed, the police have often lamented that the case with which some accused individuals are granted bail in hobbing their crime fighting efforts.”

The editorial ended as follows:

“This problem, we note is not unique to Jamaica for, in October 2012, British newspapers published Government data showing that every 10 days a murder is committed in Great Britain by offenders on bail.

According to those statistics, at least 37 criminal were convicted of murder while on bail for another offence in the year 2011- an average of three every month.

In addition the data showed that in 2011, a total of 65,627 criminals were convicted for new offence they had committed while on bail, while the figures here in Jamaica are not as frightening, we cannot ignore the reality to which they speak. Jamaica needs to get to the point where the principles of Justice and rights of individuals are observed, while the safety of the community is protected.”

The Antigua and Barbuda Bail Bill, 2016 like the statutes mentioned above, the grant of bail relates to where a person is charged a criminal offence. And bail essentially goes to such a person being released from custody subject to certain conditions, including surrendering to custody. This in turn means surrendering to a court or a police station, depending on the condition upon which bail was granted.

The Antigua and Barbuda Bill has seven Parts being: Part I- Preliminary; Part II Jurisdiction; Part III Right to bail and Applications therefor, Part IV- The record regarding bail applications; Part V- Bail applications to the High Court; Part VI-Sureties, security and connected matters; Part VII-Offences; and Part VIII-Miscellaneous. But while the Antigua and Barbuda Bill does not depart much from the statutes mentioned above, it seeks to create a logical sequence of a bail application and the sequel thereto, in the context of Antigua and Barbuda.

PART I: This, in the usual form, contains the short title and the definitions. In the terms of definitions, the following stand out; “bail”, “child” and “surrender to custody”.

“Bail” is given several stands in an effort to cover the known circumstances where a person is in custody because of the allegation of a crime. But essentially, bail goes to a release based on law in order to secure that person’s attendance at court on the date of the next-hearing or otherwise. This introduces the definition “surrenders to custody” which in short form means that the person granted bail must present himself or herself to the place to which he or she was ordered to surrender. A failure so to do may have serious legal consequences in terms of that person’s liberty, depending on the circumstances.

In some instances children are charged with a crime including murder. The court in such a context has challenges given the age of the child and the gravity of the offence.

In a sterling decision our learned Chief Justice, then a High Court Judge in Anguilla, made a meticulous examination of law and the circumstances and ended up granting bail to the minor on a murder charge. It is of some significance to note that at the time, the colony of Anguilla had no statute concerning bail so that the common law rules dominated the arguments. The case is that of Thelston Brooks V Attorney General of Anguilla, AXA 2006/0089.

Finally, in the definition section of the Bill, “child” is defined as a person under the age of 14 years. This may cause negative anxiety but it is part of the reality of crime the world over. And a progressive and responsible country must tackle that reality in its own context.

PART II: Clause 3 makes the proposed legislation applicable to offences committed in Antigua and Barbuda or elsewhere plus extraditable offences. The provision goes further to make the legislation applicable to Judges of the High Court and Court of Appeal, Magistrates and Police Officers of a certain rank. The basic rule being that each functionary must act strictly in accordance with the relevant legislation granting jurisdiction.

The above is fortified by clause 4 which vests exclusively in the High Court and Court of Appeal the jurisdiction to hear certain applications for bail. The offences are murder, treason, and hijacking and although some of the crimes may not have emerged as yet in Antigua and Barbuda the underlying reality is that this is the age of computers and all variation of telecommunications. Plus there are television shows that highlight these issues either in the form of entertainment or news. This also the age of hacking into secure data on the micro level as well as at the macro level of sovereign state.

The inclusion of these ‘new’ crimes if approved by policy seeks to put Antigua and Barbuda on the ready to deal with such crimes. Indeed, in the Electronic Crimes Act

2016, there are 14 offences created which the Act seeks to confine them to the High Court and Court of Appeal for these are not ordinary crimes.

PART III: This Part is in alignment with the Constitution of Antigua and Barbuda in highlighting the entitlement to bail. At the same time, the Constitution allows for such a right to be taken away in some circumstances. But with respect to a person who is charged with an offence which does not carry imprisonment the right to bail is preserved.

Thus, the remainder of Part III goes on to deal with court's powers and related procedural matters. These include circumstances in which bail may be denied; restrictions on conditions of bail; general provisions respecting bail; exceptions to the general conditions of bail under clause 9 and police bail.

CLAUSE 7 of the Bills deals with circumstances in which bail may be denied. These are for the most part, essentially, common law rules and include: The judge being satisfied that the applicant will fail to surrender to custody, may commit an offence while on bail; may interfere with witnesses the applicant is already serving a sentence; the applicant has committed another offence while on bail; and the insufficiency of information obtained by the Judge, Magistrate or Police officer at the time of the application. Subclauses 7(2) goes on to give further matters the court must take into account when considering an application for bail with respect to a person to whom subclause (1) (a) applies (failure to surrender to custody, committing an offence while on bail or interference with witnesses).

Subclause 7(3) also gives the relevant functionaries further ground for denying bail for the person's protection and welfare which includes a child or young person.

CLAUSE 8 of the Bill is aimed at placing restrictions on the conditions of bail set out in clause 9 of the said Bill. Further, clause 10 seeks to create exceptions to the general conditions of bail contained in clause 9. The operative words are: "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 subclause (4) of clause 9 or to enable inquiries or a report to be made into the defendant's physical or mental condition".

Subclause (6) of clause 9 allows for variation of conditions of bail, or if bail was granted unconditionally to impose conditions.

CLAUSE 9 of the Bill prescribes the general conditions of bail and gives the judge or magistrate a discretion or power as to whether the defendant is required to provide a surety or the payment of an amount, as many be specified.

Subclause 9 (3) dictates what the defendant may be required to do. These include the surrender of all travel documents, informing the court of any intention to leave, to report to a police station as ordered; and to comply with such requirements as appear to the court to be necessary to ensure that the defendant surrenders to custody, does not commit

an offence; does not interfere with witnesses; and makes himself available for the purpose of a report or a medical examination.

Sunbclause 9 (4) seeks to supplement subclause 9(3) (d) by giving the functionary the power or discretion to impose a curfew as to time and location for reporting.

Subclause 9(5) of the Bill is concerned with a surety in relation to a juvenile as consented to by the parent or guardian. It also specifies that the said parent or guardian may be required to ensure that the juvenile complies with the conditions of bail imposed. There are further requirements in the same subclause in relation to conditions. One is that no condition shall be imposed on a parent or guardian if it appears that the juvenile will attain the age of 17 prior to the time by which the juvenile is required to surrender to custody. Further still, a parent or guardian shall not be required to secure compliance with any condition to which he did not consent and cannot be bound by in a sum greater than ten thousand dollars with respect to any condition.

CLAUSE 10 of the Bill makes exception to the conditions of bail under clause 9, whether on an application for bail or an application to vary conditions. The provision goes on to mention the circumstances in which the conditions may be imposed being: to prevent the occurrence of any of the events mentioned in subclause 9(4), or to inquiries to be made into the defendant's physical or mental condition.

CLAUSE 11 is concerned with police bail and is confined to offences which do not have a custodial sentence attached whether by itself or in the form of a time or imprisonment. And further, the police officer must be of the rank of inspection or above the rank

PART IV: In this Part clause is both administrative and legal it that in requires the making of a record of the decisions on bail with the prescribed particulars a copy of which must be given to the defendant as soon as practicable after the record is made. However, in the case where bail is granted by endorsing a warrant of arrest, the police officer making the arrest must make the record instead of the judge or magistrate.

PART V: relates to the matter of giving reasons for a decision on bail whether it concerns: withholding bail; imposing or varying conditions, on granting bail over the objection by the prosecution in relation to an offence punishable by imprisonment for 5 years. In the usual manner the defendant must be given a copy of the reasons.

Rights of appeal are statutory, and the Bill, in clause 14 follows that rule in granting a defendant a right of appeal the High court from a decision of a magistrate. And the magistrate is required to inform the defendant of this right. Further, the magistrate is required to give a certificate in the prescribed form indicating, *inter alia*, that full arguments were heard on the application but the application was refused. Again, the defendant must be given a copy of the certificate.

CLAUSE 15 prescribes the procedure to be followed in further hearing after an application for bail was denied. And in clause 16, the High Court is given further powers in relation to the grant of bail or varying conditions of bail.

CLAUSE 17 follows clause 14 in terms of the grant of right to appeal. In this case it is the prosecution which is given a right of appeal in relation to a defendant who is charged with an offence with a custodial sentence of 5 years. The appeal is against a decision of a magistrate which is to the High Court. The prosecution must however make an objection to the grant of bail before it is granted and certain procedural requirements must be followed by the prosecution if it wishes to exercise the right of appeal. These are an oral notice to the magistrate court at the conclusion of the hearing followed by a written notice of appeal to be delivered to the magistrate's court within two hours after the conclusion of the proceedings.

Subclauses 17(2) to (5) prescribe a number of matters which must be instituted. First the person concerned must be remanded in custody; the appeal must be commenced within 5 days, excluding court holdings and weekends and the appeal shall be by way of a re-hearing.

Part VI: This part is concerned with a central issue in terms of bail where there is a grant of bail.

Subclause 18(2) prescribes a number of matters which the court must consider in making a determination as to the suitability of the proposed surety. These include: the proposed surety's financial resources, his character, the surety's proximity in terms of the defendant, and require the surety to make a statutory declaration as prescribed in the Second Schedule.

Subclause 18(3) deal with the circumstances where a suitable surety cannot be found or the defendant has been committed an account of the failure to find a surety. In such circumstances the court may reduce the amount by which the surety is to be bound dispose of the requirement for a surety or alternative deal with the matter "as the court thinks fit.

Subclauses 18(4) to (6) are concerned with the matter of a recognizance for a surety under subclause 18(2).

CLAUSE 19 speaks to the issue of forfeiture of security in the circumstances where the person has failed to surrender to custody. In such a circumstances the court is

empowered to forfeit the security if no reasonable cause is shown for the failure to surrender to security.

Subclause(2) is concerned with further powers of the court respecting forfeiture, such as the extent of the forfeiture. And subclause (3) deals with the effective date of the order.

Subclauses (4) and (5) provide for, in effect, a quasi-appeal against the order for forfeiture and give the circumstances in which the application may be made and by whom. Further, subclause 19(7) speaks to the circumstance where an order under subclause (4). In that event the money forfeited is to be paid over to the person who gave the security.

Subclause 19(6) is concerned with the manner in which a security ordered to be forfeited is to be dealt with, whether it consists of money or otherwise.

PART VII: This covers the field of offences and related matters. The clauses involved are 20 to 24.

Clause 20 relates to indemnifying on agreeing to indemnify sureties; while clause 21 relates to absconding by a person released on bail, but it does provide for such a person to show he had reasonable cause from his failure.

Clause 22 relates to arrest of a person who has absconded, with or without a warrant and with detailed procedures in this regard, including grounds upon which a police officer may arrest without warrant. The “reasonable grounds” test is contained in subclauses 22(3) (a) and (b).

Clause 23(1) makes it an offence for a person to agree 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.

Further, under clause 24 it is an offence for a person to stand security on consideration of property, which at the time of standing such surety, the property is being used as security for the purpose of standing surety for any other person, unless the approval of the court is first obtained.

PART VIII: These are miscellaneous provisions concerned with rules and regulations and commencement of the Bill if it becomes a statute.

SCHEDULES

The First Schedule details the offences in respect of which application for bail can only be heard by the High Court and the Court of Appeal against the decision of the High Court.

The Second Schedule prescribes the statutory declaration to be made by a surety.