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THE BAIL LAW (7 of 1992)

(1997 Revision)

Revised under the authority of the Law Revision Law (19 of 1975).

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Law 7 of 1992-13th July, 1992.

Revised this 4th day of March, 1997.

BAIL LAW

(1997 Revision)

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BAIL LAW

(1997 Revision)

PART I-Introductory

1. This Law may be cited as the Bail Law (1997 Revision). Short title

2. In this Law - Definitions

“bail” means bail grantable under the law (including the common law);

“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 whose arrest for the offence a warrant (endorsed for bail) is being issued;

“court” includes a judge, a magistrate and a justice of the peace; and

“surrender to custody”, in relation to a person released on bail, means surrendering to custody in accordance with the requirements of the grant of bail.

PART II-Grant of Bail in Criminal Proceedings

3. If bail is granted in criminal proceedings it shall be granted in accordance with this Law. Bail in criminal proceedings

4. A court or police officer shall not make it a condition on the grant of bail in criminal proceedings that the person granted bail provides any recognisance or security for his surrender to custody unless it appears to the court or police officer that the person is unlikely to remain in the Islands until the time appointed for him to surrender to custody, in which case he may be required to provide, or have provided on his behalf, before release on bail, recognisance or security for his surrender to custody. Recognisance or security may be required

5. (1) A court or police officer may require a person before release on bail in criminal proceedings to provide a surety or sureties to secure his surrender to custody. Surety or sureties may be required

(2) A court or police officer when considering a person’s suitability to be a surety may have regard, among other matters, to his -

	<ul style="list-style-type: none">(a) financial resources;(b) character and any previous convictions; and(c) proximity (of kinship, place of residence or otherwise) to the person for whom he is to be surety.
Further requirements on grant of bail.	<p>6. A court or police officer shall not require a person to comply with any requirements either before release on bail in criminal proceedings or later except such requirements as appear to the court or police officer to be necessary to secure that the person -</p> <ul style="list-style-type: none">(a) surrenders to custody;(b) does not interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or another person; or(c) in the case of a person referred to in section 17(b), makes himself available to enable inquiries or a report to be made to assist the court to deal with him for the offence.
Conditions of bail	<p>7. A court or police officer shall not grant a person bail in criminal proceedings subject to conditions except such conditions as appear to the court or police officer to be necessary to secure that the person -</p> <ul style="list-style-type: none">(a) surrenders to custody;(b) does not commit any offence while on bail;(c) does not interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or another person; or(d) in the case of a person referred to in section 17(b), makes himself available to enable inquiries or a report to be made to assist the court to deal with him for the offence.
Decisions to be recorded and made available	<p>8. (1) This section does not apply in respect of the Grand Court.</p> <p>(2) When a court or police officer makes a decision in respect of bail in criminal proceedings the court or police officer shall make a written record of the decision.</p> <p>(3) If a court or police officer -</p> <ul style="list-style-type: none">(a) withholds bail in criminal proceedings;(b) imposes a condition on granting bail in criminal proceedings; or(c) varies any condition of bail in criminal proceedings or imposes a condition in respect of such bail, <p>the court or police officer shall give reasons for doing so and include those reasons in the record of the decision made in accordance with subsection (2).</p>

(4) A court or police officer shall provide a copy of a record made under subsection (2) to the person in respect to whom the decision was made if requested to do so by that person.

9. If a court or police officer withholds bail in criminal proceedings from a person not represented by an attorney-at-law, the court or police officer shall inform the person of any other right the person may have to apply for bail in those proceedings.

Person to be advised of
any other right to bail

10. (1) A court may order the forfeiture of the whole or any part of any recognisance or security given by or on behalf of a person under section 4 or 5 if it is satisfied that the person failed to surrender to custody unless it appears to the court that he has reasonable cause for his failure.

Forfeiture of
recognisance or security

(2) An order under subsection (1) takes effect twenty-one days after it was made unless previously revoked.

(3) A court that has made an order under subsection (1) may revoke the order if, on application by or on behalf of the person who gave the recognisance or surety, it is satisfied that a reasonable excuse did exist for the person to fail to surrender to custody.

(4) An application under subsection (3) may be made before or after the order for forfeiture has taken effect, but a court has no power to consider such an application unless it is satisfied that the applicant gave the prosecution reasonable notice of his intention to make the application.

(5) An order under subsection (1) shall specify the way in which the forfeiture is to be enforced.

11. (1) A person who has been released on bail in criminal proceedings shall not fail without reasonable cause to surrender to custody, and whoever fails so to do is guilty of an offence and liable on conviction to a fine of five thousand dollars and to imprisonment for twelve months.

Offence of not
surrendering to custody

(2) A person who -

- (a) has been released on bail in criminal proceedings; and
- (b) having a reasonable cause for doing so has failed to surrender to custody,

shall surrender to custody at the appointed place as soon after the appointed time as is reasonably practicable, and whoever fails so to do is guilty of an offence and

liable on conviction to a fine of five thousand dollars and to imprisonment for twelve months.

(3) In subsections (1) and (2) it is for the accused to prove that he had reasonable cause for failing to surrender to custody.

(4) A failure by a court or police officer to give a copy of a record to a person when requested to do so in accordance with section 8(4) does not constitute a reasonable cause for that person's failure to surrender to custody.

(5) In proceedings for an offence under subsection (1) or (2), a document that -

- (a) purports to be part of the record -
 - (i) made under section 8(2); or
 - (ii) in the case of bail granted by the Grand Court, made by the Grand Court in respect of the grant of bail, so far as it relates to the time and place appointed for the person specified in the record to surrender to custody; and
- (b) is certified to be a true copy -
 - (i) in the case of bail granted by a police officer, by that police officer; or
 - (ii) in the case of bail granted by a court, by the Clerk of the Grand Court,

is evidence of the matter so recorded.

Arrest for failure to
surrender to custody, etc.

12. (1) A court may issue a warrant for the arrest of a person it has released on bail in criminal proceedings if he fails to surrender to custody.

(2) A court may issue a warrant for the arrest of a person it released on bail in criminal proceedings and who has surrendered into its custody if he absents himself from the court without the court's approval before it is ready to begin or resume the proceedings in respect of that person.

Arrest of person on bail

13. (1) A police officer may arrest without warrant a person on bail in criminal proceedings-

- (a) if the officer has reasonable grounds to believe that the person is not likely to surrender to custody;
- (b) if the officer has reasonable grounds to believe that the person is likely to break or has broken a condition of his bail; or
- (c) if a surety notifies the officer that the person is unlikely to surrender to custody and for that reason wishes to be relieved of his obligations as surety.

(2) A person arrested under subsection (1) shall, as soon as practicable, be brought before -

- (a) the court that granted him bail; or
- (b) the police officer who granted him bail or, if that officer is not available, an officer of a rank equal to or higher than the rank of the officer that granted him bail, as the case may be.

(3) A court or police officer before whom a person is brought under subsection (2) shall remand the person in custody if the court or officer is of the opinion that the person -

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

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

14. (1) A person shall not -

Offence of agreeing to indemnify surety, etc.

- (a) agree to indemnify a person from any liability he may incur as surety to secure the surrender to custody of a person granted bail in criminal proceedings; or
- (b) agree to act as a surety to secure the surrender to custody of a person granted bail in criminal proceedings on condition that he is indemnified from any liability he may thereby incur,

and if the person so agrees, is guilty of an offence and liable on conviction to a fine of five thousand dollars and to imprisonment for twelve months.

(2) An offence is committed under subsection (1) whether or not-

- (a) the agreement is made before or after the person to be indemnified becomes a surety; or
- (b) the agreement contemplates compensation in money or money's worth.

(3) Proceedings for an offence under subsection (1) may only be instituted by or with the consent of the Attorney-General.

15. (1) If a court has refused to grant a person bail in criminal proceedings it shall consider at each subsequent hearing while the person is eligible for bail in those proceedings whether the person ought to be granted bail.

Subsequent applications for bail

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

(3) At any subsequent hearing the court need not hear an argument it has previously heard.

Court's power to vary,
etc., bail conditions

16. (1) A court may -
- (a) impose a condition or a further condition on bail it has granted in criminal proceedings after it has granted such bail; or
 - (b) vary or rescind any condition subject to which it has granted bail in criminal proceedings,

on the application of the person to whom bail was granted, the prosecutor or a police officer.

(2) Section 8 applies in respect of any decision made by a court, other than the Grand Court, under subsection (1).

PART III-Right of Accused Persons and Others to Bail

Persons entitled to bail

17. A person is entitled to bail under this Part if he has been -

- (a) accused of an offence but not convicted of the offence;
- (b) convicted of an offence and the case has been adjourned by the court to enable inquiries or a report to be made to assist the court to deal with him for the offence; or
- (c) convicted of an offence under the Misuse of Drugs Law (1995 Revision) and is appearing or has been brought before a court under section 54 or 57 of that Law.

1995 Revision

General right to bail

18. A court or police officer shall grant bail to a person who is entitled to bail under this Part unless -

- (a) the court or police officer is satisfied the person, if released on bail, would -
 - (i) fail to surrender to custody;
 - (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 another person;
- (b) the court or police officer is satisfied the person should remain in custody for his protection or welfare; or
- (c) in the case of a person referred to in section 17(b), it appears to the court that it would be impracticable to complete the inquiries or make the report without keeping the person in custody.

Matters that may be
taken into account

19. A court or police officer, in order to come to a conclusion for the purpose of section 18, may take into consideration (amongst other things) -

- (a) the nature and seriousness of the offence (and the probable method of dealing with the defendant or offender);
- (b) the character, antecedents, associations and community ties of the defendant or offender;
- (c) the defendant's or offender's record as respect the fulfilment of his obligations under previous grants of bail (whether granted under this Law or otherwise); and
- (d) in the case of a person referred to in section 17(a), the strength of the evidence of the defendant having committed the offence.

PART IV - Rules of Court

20. (1) A rule making authority in respect of a court may make such rules of court in respect of that court as it considers necessary or convenient for the purposes of this Law. Rules of court

(2) Subsection (1) is without prejudice to any other power to make rules the rule making authority has.

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Carmena H. Parsons
Clerk of Executive Council