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BAIL LAW
(2007 Revision)

Law 7 of 1992 consolidated with Laws 18 of 2005 and 27 of 2006.

Revised under the authority of the Law Revision Law (1999 Revision).

Originally enacted -

Law 7 of 1992-13th July, 1992
Law 18 of 2005-14th October, 2005
Law 27 of 2006-14th September, 2006.

Consolidated and revised this 19th day of June, 2007.

Note (not forming part of the Law): This revision replaces the 2006 Revision which should now be discarded.

BAIL LAW

(2007 Revision)

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BAIL LAW

(2007 Revision)

PART I - Introductory

1. This Law may be cited as the Bail Law (2007 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 -
 - (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. 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 -
- (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 7. (1) 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 -
- (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.
- (2) Where a court imposes a curfew as a condition, the court, in addition, may include requirements for securing the electronic monitoring of the person's whereabouts during the curfew periods specified in the condition.
- (3) A court may not impose a curfew condition which includes the requirements specified in subsection (2) unless the court -
- (a) has been notified by the Ministry or Portfolio responsible for electronic monitoring arrangements that such arrangements are available in the area in which the place or places proposed to be specified in the condition is situated; and
 - (b) is satisfied that the necessary provision can be made under those arrangements.
- (4) Electronic monitoring arrangements made by the Ministry or Portfolio responsible for such arrangements may include entering into contracts with other persons for the electronic monitoring by them of the whereabouts of persons on bail.

(5) Whoever damages, destroys or tampers with any device used for or to facilitate his or any other person's electronic monitoring is guilty of an offence and liable on summary conviction to a fine of five hundred dollars and to imprisonment for one year.

(6) Any document or information in relation to a person provided under electronic monitoring arrangements to which he is subject by the person responsible for such monitoring shall *prima facie* be admissible in any courts in the Islands.

8. (1) This section does not apply in respect of the Grand Court.

Decisions to be recorded
and made available

(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.

(3) If a court or police officer -

- (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,

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).

(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.

Offence of not
surrendering to custody

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.

(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.

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.

Arrest for failure to surrender to custody, etc.

(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.

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

Arrest of person on bail

- (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 occur,

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.

Subsequent applications
for bail

- 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.

- (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

17. (1) Subject to subsection (2), a person is entitled to bail under this Part if he has been - Persons entitled to bail

- (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 (2000 Revision) and is appearing or has been brought before a court under section 54 or 57 of that law. 2000 Revision

(2) A person accused or convicted of any of the following offences is not entitled to bail -

- (a) murder;
- (b) manslaughter;
- (c) rape, or any other offence of a sexual nature against a person punishable by imprisonment for four years or more;
- (d) arson;
- (e) wounding or causing grievous bodily harm;
- (f) wounding or inflicting grievous bodily harm;
- (g) burglary;
- (h) robbery;
- (i) extortion;
- (j) kidnapping;
- (k) abduction;
- (l) wrongful confinement;
- (m) bomb hoax;
- (n) aiding a prisoner to escape;
- (o) any offence against the Firearms Law (2006 Revision) punishable by imprisonment for four years or more; 2006 Revision
- (p) any offence against the Misuse of Drugs Law (2000 Revision) (other than the offence of consuming), punishable by imprisonment for four years or more; 2000 Revision
- (q) any offence against the Terrorism Law, 2003 punishable by imprisonment for four years or more; Law 14 of 2003
- (r) conspiracy to commit any of the offences listed in paragraphs (a) to (q); and
- (s) any attempt to commit any of the offences listed in paragraphs (a) to (q).

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

- (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

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.

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

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Carmena Watler
Clerk of Cabinet

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