

CAYMAN ISLANDS



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## THE BAIL LAW, 1992 (LAW 7 OF 1992)

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Law 7 of 1992

I Assent

**ALAN SCOTT**  
Governor

30th August, 1992

## **A LAW PROVIDING FOR THE GRANT OF BAIL IN CRIMINAL PROCEEDINGS**

ENACTED by the Legislature of the Cayman Islands.

### **PART 1 – PRELIMINARY**

- Citation. 1. This Law may be cited as the Bail Law, 1992.
- Commencement. 2. This Law comes into effect on such date as the Governor appoints by notice in the *Gazette*.
- Interpretation. 3. (1) In this Law –
- "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;

"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.

(2) A reference in this Law to any conduct or type of conduct of a person includes any such conduct of that person before the commencement of this Law.

## PART 2 – GENERAL PROVISIONS IN RESPECT OF GRANT OF BAIL IN CRIMINAL PROCEEDINGS

Bail in criminal proceedings.

4. If bail is granted in criminal proceedings it must be granted in accordance with this Law.

Recognizance or security may be required.

5. A court or police officer must not make it a condition on the grant of bail in criminal proceedings that the person granted bail provides any recognizance 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, recognizance or security for his surrender to custody.

Surety or sureties may be required.

6. (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.

(2) A court or police officer when considering a person's suitability to be a surety may have regard (amongst other things) to his –

- (a) financial resources; and
- (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 the grant of bail.

7. A court or police officer must 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; or
- (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 18(b) (person convicted but not sentenced) – 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.

8. A court or police officer must 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; or
- (b) does not commit any offence while on bail; or
- (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 18(b)(person convicted but not sentenced) – 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.

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

(2) When a court or police officer makes a decision in respect of bail in criminal proceedings the court or police officer must make a written record of the decision.

(3) If a court or police officer –

- (a) withholds bail in criminal proceedings; or
- (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 must 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 must provide a copy of a record made in accordance with subsection (2) to the person in respect to whom the decision was made if requested to do so by that person.

Person to be advised of any other right to bail.

10. 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 must inform the person of any other right the person may have to apply for bail in those proceedings.

Forfeiture of recognizance or security.

11. (1) A court may order the forfeiture of the whole or any part of any recognizance or security given by or on behalf of a person under section 5 or section 6 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.

(2) An order under subsection (1) takes effect 21 days after it was made unless it is 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 recognizance 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) must specify the way in which the forfeiture is to be enforced.

Offence of not  
surrendering to custody.

12. (1) A person who has been released on bail in criminal proceedings must not fail without reasonable cause to surrender to custody.

Penalty: A fine not exceeding \$5000 or imprisonment for a term not exceeding 12 months or both.

(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,

must surrender to custody at the appointed place as soon after the appointed time as is reasonably practicable.

Penalty: A fine not exceeding \$5000 or imprisonment for a term not exceeding 12 months or both.

(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 9(3) does not constitute a reasonable cause for that person's failure to surrender to custody.

(5) In proceeding for an offence under subsection (1) or (2) a document that –

(a) purports to be part of the record –

(i) made under section 9(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.

13. (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.

14. (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; or

(b) if the officer has reasonable grounds to believe that the person -

(i) is likely to break a condition of his bail; or

(ii) 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 in accordance with subsection (1) must 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 in accordance with subsection (2) must 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) has broken or is likely to break a condition of his bail,



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

Offence of agreeing to indemnify surety, etc.

15. (1) A person must not –

- (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.

Penalty: A fine not exceeding \$5,000 or imprisonment for a term not exceeding 12 months or both.

(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) cannot be instituted except by or with the consent of the Attorney General.

Subsequent applications for bail.

16. (1) If a court has refused to grant a person bail in criminal proceedings it must 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.

17. (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
- (c) the person to whom bail was granted; or
- (d) the prosecutor or a police officer.

(2) Section 9 (decision to be recorded and made available) applies in respect of any decision made by a court, other than the Grand Court, under subsection (1).

### PART 3 – RIGHT OF ACCUSED PERSONS AND CERTAIN OTHER PERSONS TO BAIL

Persons entitled to bail.

18. A person is entitled to bail in accordance with this Part if –

- (a) he has been accused of an offence but not convicted of the offence; or
- (b) he has been 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) he has been convicted of an offence under the Misuse of Drugs Law (Second Revision) and is appearing or has been brought before a court by virtue of section 20 (breach of requirement of community order) or section 24 (breach of requirement of attendance order) of that Law.

General right to bail.

19. A court or police officer must grant bail to a person who is entitled to bail in accordance with this Part unless –

- (a) the court or officer is satisfied the person, if released on bail, would –
  - (i) fail to surrender to custody; or
  - (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; or
- (b) the court or 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 18(b) (person convicted but not sentenced) – 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.

20. A court or police officer in order to come to a conclusion for the purpose of section 19 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); and
- (b) the character, antecedents, associations and community ties of the defendant or offender; and

- (c) the defendant's or offender's record as respect the fulfillment of his obligations under previous grants of bail (whether granted in accordance with this Law or otherwise); and
- (d) in the case of a person referred to in section 18(a) (person accused but not convicted on an offence) – the strength of the evidence of the defendant having committed the offence.

**PART 4 - RULES OF COURT, TRANSITION PROVISIONS AND AMENDMENTS**

Rules of court.

21. (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.

Transitional provisions.

22. This Law applies to people who apply for or are granted bail in criminal proceedings after the commencement of this Law, it does not apply to people granted bail that is in force immediately before the commencement of this Law to whom the law in force at that time with respect to that bail shall continue to apply notwithstanding any amendment made to that law by virtue of section 23

Amendments to other Laws.

23. The Laws specified in the Schedule are amended as set out in the Schedule.

**SCHEDULE**

**Section 23**

**AMENDMENTS TO OTHER LAWS**

Police Law amended.

1. Section 34 of the Police Law is amended by omitting subsections (2) and (3) and substituting the following subsections –

"(2)If upon such enquiry there is reason to believe that the person arrested has committed an offence such officer being of the rank of sergeant or above may release the person on bail.

(3)If, on a person being so taken into custody, it appears to the officer to whom the person is brought that enquiries into the case cannot be completed forthwith he may release him on bail.

(3A)Subject to subsection (3B), a release on bail of a person under this section is a release on bail granted in accordance with the Bail Law, 1992.

(3B)Nothing in the Bail Law, 1992, prevents the re-arrest without warrant of a person released on bail subject to a duty to attend at a police station if new evidence justifying a further arrest has come to light

since his release.

(3C) Subject to subsection (3D), in this section references to "bail" are references to bail subject to a duty –

- (a) to appear before the Summary Court at such time or place; or
- (b) to attend at such police station at such time,

as the officer granting bail appoints.

(3D) If an officer has granted bail to a person subject to a duty to appear at a police station, that officer may give written notice to the person that his attendance at the police station is not required.

(3E) If a person arrested for an offence who was released on bail subject to a duty to attend at a police station so attends, he may be detained without charge in connection with that offence only if the officer who granted bail has reasonable grounds for believing that the person's detention is necessary –

- (a) to secure or preserve evidence relating to the offence; or
- (b) to obtain such evidence by questioning him .".

Juveniles Law, 1990,  
amended.

2. Section 16 (1) of the Juveniles Law, 1990, is amended by omitting everything after "may release him on" and substituting "bail in accordance with section 34 of the Police Law, 1976."

Criminal  
Procedure Code  
amended.

3. The Criminal Procedure Code is amended by repealing section 27 and substituting the following section –

"Bail.

27. (1) A court before which a person appears or is brought or is committed for trial may grant the person bail in accordance with the Bail Act 1992.

(2) A court may by order confirm or extend the period of bail granted by the court itself or under section 34 of the Police Law, 1976.

(3) The Grand Court may in any case and at any stage of a case –

- (a) direct that a person be admitted to bail in accordance with the Bail Law, 1992; or
- (b) vary any condition or requirement attached to the grant of bail by the Summary Court."

Court of Appeal Law  
amended.

4. Section 14(1) of the Court of Appeal Law is amended by omitting "admit him to bail" and substituting "admit him to bail in accordance with

the Bail Law, 1992".

Passed by the Legislative Assembly the 13th day of July, 1992.

**SYBIL McLAUGHLIN**  
Speaker.

**GEORGETTE MYRIE**  
Clerk of the Legislative Assembly.