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Fourth Session Twelfth Parliament Republic of
Trinidad and Tobago

HOUSE OF REPRESENTATIVES

BILL

AN ACT to Amend the Bail Act, Chap. 4:60.

THE BAIL (AMENDMENT) BILL, 2024

Explanatory Note

(These notes form no part of the Bill but are intended only to indicate its general purport)

The purpose of this Bill is to amend the Bail Act, Chap. 4:60 (the Act) to make provision for the restriction of bail to persons charged with serious offences. The Bill seeks to give effect to the ruling of the Privy Council in the case of *Akili Charles v State* [2022] UKPC 31 by providing that a Judge or Master may grant bail to a person charged with the offence of murder. The Bill also seeks to impose conditions on the exercise of the Court's discretion in granting bail to persons charged with the offence of murder, serious offences listed in Part II of the First Schedule and firearm related offences. Further, the Bill seeks to impose an enhanced reversal of burden on persons charged with the offence of murder and firearm related offences to require such persons to show exceptional circumstances to justify the granting of bail. The Bill also seeks to require a review of the Act to be conducted every five years after its commencement. Finally, the Bill seeks to provide that bail granted to an accused under section 5 of the Act will continue to apply after this Bill comes into operation.

The Bill contains nine clauses, and requires a three-fifth majority vote pursuant to section 13(2) of the Constitution because it seeks to restrict a person's right to bail.

Clause 1 of the Bill seeks to provide the short title of the Act, for which this is the Bill.

Clause 2 of the Bill seeks to provide that the Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution.

Clause 3 of the Bill seeks to provide for the interpretation provision.

Clause 4 of the Bill seeks to repeal the existing section 5 of the Act and substitute a new section 5 which would set out the jurisdiction of a Judge and Master to grant bail for indictable offences, and a Magistrate to grant bail for summary offences. The proposed section 5 will also restrict the granting of bail to persons

charged with serious offences. Further, the proposed section 5 seeks to impose a burden on an accused person to satisfy a Court of the existence of exceptional circumstances which justify the granting of bail or to show sufficient cause why his remand in custody is not justified. Provision is also made to allow a person charged with a serious offence to make an application for bail where no evidence is taken within one hundred and eighty days from the date of the reading of the charge or where evidence has been taken but the trial is not completed within one year from the date of the reading of the charge.

Clause 5 of the Bill seeks to amend section 6A(2) to rectify a cross-referencing error. This clause also seeks to create a right of appeal for the accused or the prosecution against a decision of the Hight Court to grant or refuse bail.

Clause 6 of the Bill seeks to insert section 9A which would require a Judge or Master to give the accused and the prosecution reasons for the granting or refusing of bail or imposing or varying the conditions, in order to enable the accused or the prosecution to consider making an application under section 6A.

Clause 7 of the Bill seeks to insert section 22 which would require the Attorney General to conduct a review of the Act every five years from the date of commencement of the Bail (Amendment) Act, 2024.

Clause 8 of the Bill seeks to amend the First Schedule by deleting the offence of murder from Part I of the First Schedule. This clause also seeks to repeal the existing Part II of the First Schedule and substitute a new Part II which lists specified serious offences for the purpose of restricting bail.

Clause 9 of the Bill would provide for the saving of bail granted under section 5 of the Act, which is being repealed by clause 4 of the Bill

THE BAIL (AMENDMENT) BILL, 2024

Arrangement of Clauses

Clause

1. Short title
2. Act inconsistent with the Constitution
3. Interpretation
4. Section 5 amended
5. Section 6A amended
6. Section 9A inserted
7. Section 22 inserted
8. First Schedule amended
9. Savings

BILL

AN ACT to amend the Bail Act, Chap. 4:60

[, 2024]

Whereas it is enacted by section 13(1) of the ^{Preamble} Constitution that an Act of Parliament to which that section applies may expressly declare that it shall have effect even though inconsistent with sections 4 and 5 of the Constitution and, if any Act does so declare, it shall have effect accordingly:

And whereas it is provided in section 13(2) of the Constitution that an Act of Parliament to which that

section applies is one the Bill for which has been passed by both Houses of Parliament and at the final vote thereon in each House has been supported by the votes of not less than three-fifths of all the members of that House:

And whereas it is necessary and expedient that the provisions of this Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution:

Enactment ENACTED by the Parliament of Trinidad and Tobago as follows:

Short title 1. This Act may be cited as the Bail (Amendment) Act, 2024.

Act inconsistent with the Constitution 2. This Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution.

Interpretation
Chap. 4:60 3. In this Act, “the Act” means the Bail Act.

Section 5 amended 4. The Act is amended by repealing section 5 and substituting the following section:

“Circumstances in which bail may be granted 5. (1) A Magistrate may grant bail to a person charged with a summary offence.

(2) Subject to subsections (3), (4), (5) and (6), a Judge or Master may grant bail to a person who is charged with –

(a) the offence of murder before, on or after the commencement of the Bail (Amendment) Act, 2024, where he can show exceptional circumstances to justify the granting of bail;

- (b) an indictable offence, except an offence listed in Part I of the First Schedule; or Part I
First Schedule
- (c) an offence triable either way.

(3) A Judge or Master may not grant bail to a person who on or after the commencement of the Bail (Amendment) Act, 2024 is charged with an offence specified in Part II of the First Schedule and has—

- (a) a previous conviction for an offence punishable with imprisonment for ten years or more; or
- (b) a pending charge for an offence listed in that Part,

unless he can show sufficient cause why his remand in custody is not justified.

(4) A Judge or Master may not grant bail to a person who on or after the commencement of the Bail (Amendment) Act, 2024 is charged with an offence—

- (a) under section 6 of the Firearms Act and the Chap. 16:01 person has a pending charge for possession of a firearm, ammunition or prohibited weapon; or
- (b) listed in Part II of the First Schedule, except an offence under section 6 of the Firearms Act, where the prosecution informs the

Court that the person or any other person involved in the commission of the offence used or had in his possession a firearm, imitation firearm or a prohibited weapon during the commission of the offence,

unless he can show exceptional circumstances to justify the granting of bail.

- (5) Where a person is charged with the offence of murder or an offence mentioned in subsections (3) or (4) and brought before the Court but no evidence has been taken within one hundred and eighty days of the reading of the charge or where evidence has been taken but the trial is not completed within one year from the date of the reading of the charge, that person may apply to a Judge or Master for bail.
- (6) In calculating prior convictions referred to in this section, only those convictions recorded within the last ten years shall be taken into account.
- (7) For the purpose of this section, a conviction includes a conviction imposed by a court of competent jurisdiction in any foreign jurisdiction for a similar or materially similar offence to—
 - (a) the offence of murder; or
 - (b) an offence listed in Part I or Part II of the First Schedule.

- (8) For the purpose of subsections 2(*a*) and (4), the accused person shall have the burden of satisfying the Judge or Master of the existence of exceptional circumstances to justify the granting of bail.
- (9) For the purpose of subsection (4)(*a*), “ammunition” means—
 - (*a*) ammunition for any firearm of any kind; or
 - (*b*) any explosive when enclosed in any case or contrivance adapted or prepared so as to form a cartridge charge or complete round for any firearm or any other weapon, or to form any tube for firing explosives, or to form a detonator, or a projectile, which can be used (whether singly or in suitable combinations) as, or in connection with, a missile.”.

5. The Act is amended in section 6A—

Section 6A amended

- (*a*) in subsection (1A), by inserting before the words “a Master”, the words “the High Court or”;
- (*b*) in subsection (2), by deleting the words “or (2)” and substituting the words “or (1A)”;
and
- (*c*) in subsection (3), by inserting before the words “a Master”, the words “the High Court or”.

Section 9A inserted

6. The Act is amended by inserting after section 9 the following section:

“Judge or Master to give reasons for granting or refusing bail

9A. (1) Where a Judge or Master grants or refuses bail or imposes conditions of bail on an application made under section 5(2), the Judge or Master shall give reasons for granting or refusing bail or for imposing the conditions in order to enable the prosecution or the accused person, as the case may be, to consider making an application under section 6A.

(2) Where a Judge or Master is required to give reasons under subsection (1), the Judge or Master shall—

(a) include a note of those reasons in the record of his decision; and

(b) give a copy of that note to the prosecution and the accused.”.

Section 22 inserted

7. The Act is amended by inserting after section 21, the following section:

“Attorney General to review the Act

22. The Attorney General shall conduct a review of the Act every five years after the commencement of the Bail (Amendment) Act, 2024.”

First Schedule amended

8. The First Schedule is amended—

(a) in Part I, by deleting paragraph (a) and renumbering paragraphs (b), (c) and (d) as paragraphs (a), (b) and (c), respectively;

(b) by repealing Part II and substituting the following Part:

“PART II

(Sec. 5)

SPECIFIED OFFENCES

- | | |
|----------------------------|---|
| Act No. 4 of 2021 | (a) an offence committed by a person over the age of eighteen years under the Anti-Gang Act, 2021, which is punishable by imprisonment for ten years or more; |
| Chap. 11:08 | (b) an offence under the Offences Against the Person Act which is punishable by imprisonment for ten years or more, or an offence under section 48 or 54 of that Act; |
| Chap. 11:26 | (c) an offence under the Dangerous Drugs Act which is punishable by imprisonment for ten years or more; |
| Chap. 11:25 | (d) an offence under the Kidnapping Act which is punishable by imprisonment for ten years or more; |
| Chap. 11:28
Chap. 46:01 | (e) sexual offence under the Sexual Offences Act or the Children Act in which the alleged victim is a child; |
| Chap. 11:28 | (f) an offence under the Sexual Offences Act which is punishable by imprisonment for ten years or more; |
| Chap. 12:07 | (g) an offence under the Anti-Terrorism Act which is punishable by imprisonment for ten years or more; |
| Chap. 12:10 | (h) an offence under the Trafficking in Persons Act which is punishable by imprisonment for ten years or more; |
| Chap. 16:01 | (i) an offence under the Firearms Act which is punishable by imprisonment for ten years or more.”. |

Savings
Chap. 4:60

9. Notwithstanding the repeal of section 5 of the Act by the Bail (Amendment) Act, 2024, where a person has been granted bail under that section such bail shall continue to apply as though the Bail (Amendment) Act, 2024, had not come into force.

IT IS HEREBY CERTIFIED that this Act is one the Bill for which has been passed by the House of Representatives and at the final vote thereon in the House has been supported by the votes of not less than three-fifths of all the members of the House, that is to say, by the votes of _____ members of the House.

Passed in the House of Representatives this _____ day
of _____, 2024.

Clerk of the House

I confirm the above.

Speaker

IT IS HEREBY CERTIFIED that this Act is one the Bill for which has been passed by the Senate and at the final vote thereon in the Senate has been supported by the votes of not less than three-fifths of all the members of the Senate, that is to say, by the votes of Senators.

Passed in the Senate this day of , 2024.

Clerk of the Senate

I confirm the above.

President of the Senate

No. 9 of 2024

FOURTH SESSION
TWELFTH PARLIAMENT
REPUBLIC OF
TRINIDAD AND TOBAGO

BILL

AN ACT to amend the Bail Act,
Chap. 4:60

Received and read the

First time

Second time

Third time