

ANTIGUA AND BARBUDA



BAIL ACT, 2019

No. 19 of 2019

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ANTIGUA AND BARBUDA

BAIL ACT, 2019

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[L.S.]



I Assent,

Hayden Thomas,
Deputy Governor-General.

25th October, 2019.

ANTIGUA AND BARBUDA

BAIL ACT, 2019

No. 19 of 2019

AN ACT to establish the necessary procedures for the granting of bail to persons charged with committing a criminal offence and for connected matters.

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, 2019.

(2) This Act comes into operation on a date which the Minister may appoint, by notice published in the *Gazette*.

2. Interpretation

In this Act—

“bail” means bail grantable to a person in or in connection with proceedings for an offence with which the person is charged or of which the person is convicted;

“child” means a person under the age of 18 years;

“conviction” includes—

- (a) a finding of guilt;
- (b) a finding that a person is guilty but is suffering from diminished responsibility; and
- (c) a summary conviction on a complaint or on an information under the Magistrate’s Code of Procedure Act, Cap. 255;

“court” means any court in Antigua and Barbuda of competent jurisdiction and includes a magistrate or a Judge having powers to act in connection with proceedings before that court;

“defendant” means a person—

- (a) who is charged with committing an offence;
- (b) committed to stand trial for committing an offence; or
- (c) convicted of committing an offence.

“Minister” means Minister with responsibility for Legal Affairs;

“indictable offence” means an offence triable on indictment;

“offence” means any contravention of any law in force in Antigua and Barbuda or of the common law which is punishable or enforceable either on indictment or on summary conviction by fine or imprisonment;

“released on bail” means the release from custody of a defendant on the condition that the person enters into a recognisance or provides a surety or sureties;

“specified police officer” means a police officer not below the rank of Inspector;

“surrender to custody” in relation to a person released on bail, means surrendering into the custody of the court or police officer at the place, date and time appointed for the person to do so; and

“vary” in relation to bail, means to impose further conditions after bail has been granted, or to alter or rescind prior conditions relating to the granting of bail.

3. Objective of the Act

The objective of this Act is to establish a clear procedure on how bail will be administered in the state of Antigua and Barbuda and in so doing, balance the interests of society with the constitutional right of the defendant to the presumption of innocence.

4. Application of the Act

This Act applies to—

- (a) a person who is accused of committing or has been convicted of committing an offence in the state of Antigua and Barbuda; or
- (b) a person who is accused of committing an extraditable crime described under section 4 of the Extradition Act, Cap. 164.

PART II GENERAL CONDITIONS REGARDING BAIL

5. Accused person entitled to expeditious bail hearing

(1) A person who is charged with an offence is entitled to a bail hearing as soon as practicable, but no later than 48 hours after charge.

(2) A person who has been refused bail during a bail hearing under subsection (1), shall appear before the court within 21 days for a subsequent bail hearing, during which time the court shall consider any arguments presented by the defendant as to why bail should be granted.

(3) If bail is denied after a full bail hearing, there shall not be a further bail application unless there is a change in circumstances, which can include that the proceedings have become subject to unreasonable delay.

6. Procedure for granting bail to a child

(1) Pursuant to section 16 of the Child Justice Act, a police officer shall release a child who is in detention in police custody and who is accused of an offence stated in Schedule I of the Act, into the care of the parent of the child or an appropriate adult before the child appears at the initial inquiry unless—

- (a) exceptional circumstances as may be prescribed warrant detention;
- (b) the parent of the child or an appropriate adult cannot be located or is not available and all reasonable efforts have been made to locate the parent or appropriate adult; or

- (c) there is a substantial risk that the child may be a danger to any other person or to himself or herself.

(2) A police officer may, in consultation with the Director of Public Prosecutions or a designated prosecutor, release into the care of the parent or an appropriate adult a child who—

- (a) is in detention in police custody and who is accused of an offence referred to in Schedule II of the Act; or
- (b) is accused of an offence referred to in Schedule I of the Act but has not been released pursuant to subsection (1).

(3) Notwithstanding a prior decision of a police officer not to release a child, a court may authorise the release of a child from detention in police custody into the care of a parent or appropriate adult pending the appearance of the child at an assessment and subsequently at an initial inquiry even if the child is accused of committing an offence set out under Schedule II of the Child Justice Act.

(4) A child may be released on bail on condition that the child—

- (a) appears at a specified place and time for assessment;
- (b) does not interfere with a witness, tamper with evidence or associate with a person or group of specified people; and
- (c) resides at a particular address.

(5) Subject to section 18 of the Child Justice Act, a police officer who releases a child from detention in police custody on the authority of the court shall give to the child and the person into whose care the child is released a written notice which sets out the offence in respect of the child, the conditions on which the child was released and a warning that the notice must be complied with.

(6) In this section—

“assessment” means the assessment of a child by a social worker pursuant to Part VI of the Child Justice Act; and

“initial inquiry” means a procedure which takes place after an assessment and before trial by a court and which is taken to determine the suitability of the child for diversion away from formal court procedures to the informal procedures established under Part VIII of the Child Justice Act.

7. Police bail

(1) A specified police officer may grant bail to a defendant on that defendant's own recognisance to appear before a court at a specified place, date and time if—

- (a) the defendant is in custody without a warrant; and
- (b) the defendant is charged with an offence which is not punishable with imprisonment.

(2) If the offence which the defendant allegedly committed is a summary offence which is punishable with imprisonment, the police officer may grant bail to the defendant with or without the requirement for such number of sureties as the officer thinks necessary to guarantee the appearance of the defendant before a court at such place, date and time as the officer appoints.

(3) A police officer shall not grant bail where the offence charged is indictable.

8. Non-bailable offences

A magistrate shall not grant bail to a person who is charged with any of the following offences—

- (a) hijacking under the Hijacking Act, Cap. 200;
- (b) murder;
- (c) any form of Treason under the Treason Act, Cap. 439;
- (d) robbery with violence or robbery with aggravation involving the use of a firearm;
- (e) unlawful possession of firearm or ammunition contrary to the provisions of the Firearms Act, Cap. 171;
- (f) unlawful importation of a firearm or ammunition contrary to the provisions of the Firearms Act, Cap. 171; and
- (g) unlawful possession of explosives contrary to the Explosives Act, Cap. 159.

9. Circumstances in which bail may be denied

(1) A court or a specified police officer shall not grant bail to a defendant if—

- (a) the court or police officer has substantial grounds for believing that if released on bail, the defendant may—

- (i) commit further offences;
 - (ii) fail to surrender to court or flee the jurisdiction; or
 - (iii) obstruct the course of justice by interfering directly or indirectly with the victim or victims or any witness in the matter;
- (b) the court or specified police officer is satisfied that the defendant should be kept in custody—
- (i) for the protection of other persons; or
 - (ii) for the welfare of the defendant, including if the defendant is a child; or
- (c) the defendant's case is adjourned in order to conduct inquiries or to prepare a report, and it is the opinion of the court or police officer that it is not feasible for either the inquiries to be conducted or the report to be prepared without keeping the defendant in custody.

(2) In determining whether to grant bail to the defendant under subsection (1), the court or police officer shall take the following into account—

- (a) the defendant's compliance with any previous bail conditions;
- (b) the number (if any) of prior convictions which the defendant has;
- (c) the nature and seriousness of the offence;
- (d) the character, antecedents and community ties of the defendant;
- (e) the strength of the evidence against the defendant; and
- (f) any other factor which is relevant in the opinion of the court or police officer.

(3) In this section, a reference to the defendant being kept in custody if the defendant is a child includes being kept in an assessment facility established under section 9 of the Child Justice Act.

10. Powers of the High Court regarding bail

The High Court may exercise the following powers regarding bail—

- (a) grant bail to a person who was committed for trial of an indictable offence after an investigation has been conducted by a magistrate under section 22(c) of the Magistrate's Code of Procedure Act, Cap. 255;

- (b) grant bail to a person who is charged with an offence referred to in section 8 if that person can demonstrate to the court why bail should be granted;
- (c) grant bail to a person who has been convicted of an offence if that person can demonstrate to the court why bail should be granted;
- (d) vary the conditions of bail previously granted to a defendant; and
- (e) grant bail to a person who was previously denied bail.

PART III BAIL PROCEDURE AND CONDITIONS OF RELEASE

11. Decisions regarding bail

A court may make any of the following decisions during a bail hearing—

- (a) refuse to grant bail;
- (b) grant bail to the defendant on the defendant's own recognisance; or
- (c) grant bail to the defendant on conditions, with or without the requirement for such number of sureties as the court may require if the conditions set out in section 13(3) exist.

12. Release on own recognisance

(1) A defendant who is charged with an offence may be released on bail on the defendant's own recognisance with or without conditions, which may include payment into court of a cash security, to appear before a court at a specified time and date.

(2) A defendant who has been granted bail may be required to surrender his travel documents to the court.

(3) A defendant who has been granted bail shall also comply with any other requirement which the court may reasonably impose.

(4) If the defendant fails to comply with the terms of the release under subsection (1), the court may revoke bail and may enforce payment of the security, if any.

13. Bail with surety

(1) A defendant who is released on bail may be required to provide such number of sureties as the court may require to guarantee the appearance of the defendant before a court.

(2) A person who agrees to stand as a surety shall make a declaration to that effect in the form set out in the Schedule 1, and shall guarantee to pay a specified sum of money to be determined by the court.

(3) A defendant, if released on bail, may be required to provide one or more sureties under two conditions—

- (a) if the offence is an indictable offence; or
- (b) if the court has reasonable grounds to believe that the defendant will breach a condition of the defendant's release his own recognisance.

(4) Where a defendant has been granted bail subject to surety, the court shall fix the amount of money which the surety shall pay, and the following procedure shall apply to enable the recognisance of a surety in respect of the defendant—

- (a) a recognisance of the surety may be entered into before a magistrate, a specified police officer or in the case of bail granted by the High Court, before a Judge or the Registrar;
- (b) if the magistrate or the specified police officer declines to take the surety's recognisance, then in order to facilitate the recognisance to be taken the surety may apply—
 - (i) to the magistrate for the district where the surety resides; or
 - (ii) to the High Court.

(5) If a defendant after being granted bail by a court does not appear before the court at the date and time specified, the court shall—

- (a) prepare a record of the recognisance; and
- (b) enforce payment of the sum due in the manner prescribed for payment of a fine on summary conviction.

14. Qualifications of a surety

The court shall assess the suitability of a surety taking into account the following—

- (a) the financial resources of the person;
- (b) the character and antecedents of the person;

- (c) the proximity of the person to the defendant;
- (d) the readiness of the person to comply with the obligations of being a surety;
- (e) the ability of the person to ensure that the defendant complies with the bail conditions that may be imposed on the defendant;
- (f) whether the person is also on bail after being charged with the alleged commission of a criminal offence.

15. Discharge of a surety

(1) A person who is acting as a surety shall be discharged under any of the following conditions—

- (a) where the Director of Public Prosecution enters a declaration of *nolle prosequi* as it relates to the defendant;
- (b) if the charges against the defendant have been dismissed;
- (c) if the defendant has been acquitted; or
- (d) if the defendant has been convicted and remanded into custody pending sentence.

(2) A surety shall apply to the court to obtain permission to be discharged from acting as a surety, and may be required to attend a hearing to present arguments to support the application.

(3) A defendant whose surety has been discharged from the obligation of acting as a surety shall be notified as soon as possible, and if the defendant does not have another surety, he shall be taken into custody.

16. Recording of bail decisions

(1) A magistrate, Judge or specified police officer shall make a record of any decision where that magistrate, Judge or police officer—

- (a) grants bail to a defendant with or without any conditions;
- (b) denies bail to a defendant; or
- (c) varies any condition of bail previously granted to the defendant.

(2) A magistrate, Judge or specified police officer who denies bail to a defendant, or varies any condition of bail, shall state reasons for the decision taken.

(3) The magistrate, Judge or specified police officer shall give the defendant a copy of the record of the decision in the prescribed form as set out in Schedule 2.

PART IV

APPEAL

17. Right of appeal

(1) A defendant who is denied bail may appeal the decision to—

- (a) the High Court if bail was denied in the magistrate's court; or
- (b) the Court of Appeal if bail was denied in the High Court.

(2) The prosecution may appeal from the magistrate's court to the High Court, or from the High Court to the Court of Appeal—

- (a) a decision—
 - (i) to grant bail to a defendant charged with a criminal offence; or
 - (ii) to grant bail to a defendant convicted of an offence pending sentencing;
- (b) any condition of bail granted to a defendant.

18. Procedure for appeal

(1) A defendant who intends to appeal the decision of a court under section 16(1) may appeal to the Judge in Chambers.

(2) A Judge to whom a defendant has filed an appeal may—

- (a) uphold the decision of the previous court to deny granting bail; or
- (b) reverse the decision of the previous court and grant bail to the defendant if the Judge is satisfied that bail should be granted to the defendant.

(3) The prosecution may appeal a decision of a court under section 16(2) by—

- (a) giving oral notice of the intention to appeal the decision at the end of the bail hearing before the defendant is released from custody; and

- (b) serving a notice of appeal in the prescribed form in schedule 3 on both the court and the defendant not more than one hour after the conclusion of the bail hearing.

(4) If the prosecution fails to serve the notice of appeal in the time and manner prescribed under subsection (3) (b), the court shall order that the bail decision in respect of the defendant take immediate effect.

(5) Upon receiving the notice of appeal by the prosecution in the time and manner prescribed under subsection (3) (b), the court shall order the remand of the defendant into custody, pending the hearing of the appeal.

(6) The appeal hearing shall commence no later than 5 days from the date on which the notice was served.

(7) The court may make any of the following decisions after the appeal hearing—

- (a) uphold the decision of the previous court to grant bail to the defendant;
- (b) reverse the decision of the previous court and deny bail to the defendant; or\
- (c) vary the conditions of bail which were previously granted to the defendant.

PART V

MISCELLANEOUS

19. Offences

(1) A defendant commits an offence and is liable on summary conviction to a fine of \$5000 or a term of imprisonment for 2 years if, after having been released on bail, the defendant—

- (a) fails, without reasonable excuse, to surrender to custody at the appointed date and time;
- (b) interferes with a witness or witnesses, tampers with evidence or otherwise obstructs the case;
- (c) leaves the jurisdiction without informing the court or obtaining permission; or
- (d) breaches any other condition of bail.

(2) A surety commits an offence and is liable on summary conviction to a fine of \$3000 or a term of imprisonment for one year if the surety fails—

- (a) to report to the court knowledge that the defendant has breached a condition of bail; or
- (b) to declare to the court knowledge of any other criminal charge anywhere which is pending against the defendant, whether that other charge has arisen before or after the grant of bail.

20. Regulations

The Minister may make regulations generally for giving effect to this Act, and for prescribing anything that is required to be prescribed by this Act.

21. Repeal

Sections 26 to 29 of the Police Act, Cap. 330 are hereby repealed.

SCHEDULE 1

(Section 11(2))

Declaration to be made by a surety or sureties

I the undersigned of in the parish of do solemnly and sincerely declare as follows:

I have agreed to offer myself as a surety for defendant in the case of R v. on the condition that the said defendant appears before the District Court of on the..... day of in the year 20..... at a.m/p.m. and on any other date to be fixed thereafter at any other court until the final disposal of the case.

I agree to owe to the Crown the sum of \$..... to be levied on my movable and immovable property if the said defendant fails to appear at the place date and time stipulated.

I declare that no criminal charge is pending against me and to my knowledge no other criminal charge is pending against the defendant anywhere, and if either circumstance shall change I undertake to inform the court. In addition, I have not agreed to offer myself as a surety for any other person.

Signed:

.....
Surety

Declared before me on the day of in the year 20.....
Signed:

.....
**Magistrate/Judge/Police Officer/Registrar*

**Strike whichever is inapplicable.*

SCHEDULE II

(Section 15(3))

IN THE MATTER OF AN APPLICATION BY

TO BE

GRANTED BAIL UNDER SECTION 15 OF THE BAIL ACT, 2019

Before

**Magistrate/Judge/Police Officer*

**Strike whichever is inapplicable.*

MADE ON THE DAY OF 20.....

DECISION

Bail is granted to on the following conditions:

1. Recognizance without sureties in the amount of \$00 with/without conditions.

OR

Recognizance with sureties in the amount of \$00 and a cash

component of \$00 with/without conditions.

Name(s) of approved surety or sureties:

.....
.....
.....
.....

CONDITIONS:

The accused shall:

1. Abstain from communicating or associating with the following person(s) under any circumstances either directly or indirectly **EXCEPT** in the presence of legal counsel:

2. Not to attend at/within _____ feet of the residence, place of employment or place of education of _____.

3. Reside at _____.

4. Notify in writing the officer in charge at _____ Police Station 72 hours prior to any change in his/her address and reside thereafter at the address so provided.

5. Obey a curfew between _____ p.m. and _____ a.m. by remaining in his/her residence and shall not leave the said residence during the period of time stipulated.

6. Report to the _____ Police Station between the hours of _____ a.m. and _____ p.m. on the following days: _____, _____ and _____.

7. Surrender all travel documents to the Registrar of the High Court.

8. Not have in his/her possession any firearm, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance.

9. Surrender every firearm license, authorisation, permit and certificate he/she may possess to the officer in charge at _____ Police Station within twenty-four (24) hours of his/her release from custody.

10. Not have in his possession any such thing intended for use as a weapon as defined by the Laws of Antigua and Barbuda.

11. Not to attend at/within _____ feet of _____

Bail is **NOT** granted to For the following reasons:

1. _____

2. _____

3. _____

4. _____

5. _____

BY THE COURT

.....
REGISTRAR

SCHEDULE III

(Section 16(3))

WRITTEN NOTICE OF APPEAL BY THE PROSECUTION AGAINST THE GRANT OF BAIL THE MAGISTRATES' COURT/HIGH COURT

WHEREAS at a magistrates' court/High Court sitting on the _____ day of 20____, the defendant was granted bail in respect of the following offence(s):

(briefly state particulars of offence(s))

which is an offence/are offences punishable by imprisonment.

AND WHEREAS at _____ am/pm oral notice of appeal was given by the prosecution at the conclusion of the proceedings in which bail was granted,

NOW TAKE NOTICE that the prosecution will appeal to the High Court against the granting of the said bail.

This _____ day of _____ 20____.

Signed

.....
(on behalf of the prosecution)

Passed the House of Representatives on the 23rd day of July, 2019.

Passed the Senate on the 31st day of July, 2019.

Gerald Watt, Q.C.,
Speaker.

Alicia Williams Grant,
President.

A. Peters,
Clerk to the House of Representatives (Ag.)

A. Peters,
Clerk to the Senate (Ag.)