

**BILL ESSENTIALS**  
**THE BAIL (AMENDMENT) BILL, 2013**

**BACKGROUND**

The following provides a list of previous amendments to the Bail Act Chapter 4:60<sup>1</sup>

BILL	DETAILS	Notes
<p><b>The Administration of Justice (Miscellaneous Provisions) Act, 2005 (Act No. 19 of 2005)<sup>2</sup></b></p>	<p><b>Act No. 19 of 2005</b> amended the Bail Act by providing that if the High Court refuses or grants bail to a person convicted of a summary offence punishable with imprisonment that person or the police may appeal that decision to the Court of Appeal.</p> <p>It also provided a right of appeal to an accused person or the police to the Court of Appeal where the High Court refuses or grants bail or varies the conditions of bail.</p> <p>The Act amended the Bail Act as follows:</p> <ul style="list-style-type: none"> <li>✓ by inserting two sections 6A and 11A; and</li> <li>✓ by amending sections 6 and 11 of the Act.</li> </ul>	
<p><b>The Bail (Amendment)(No.2) Act, 2005 (Act No. 32 of 2005)<sup>3</sup></b></p>	<p><b>Act No. 32 of 2005</b> made certain violent offences under the Bail Act, 1994 and the offence of kidnapping for ransom under the Kidnapping Act, 2003 (Act No. 21 of 2003) non-bailable offences.</p> <p>The Act amended the Bail Act as follows:</p> <ul style="list-style-type: none"> <li>✓ by inserting two new subsections (4) and (5) into section 5;</li> </ul>	<p><b>By Act No. 30 of 2006, Act No. 10 of 2007, Act No. 15 of 2007 and Act No. 25 of 2007 the provisions of Act No. 32 of 2005 continued in force to September 19, 2008</b></p>

<sup>1</sup> [http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical\\_List/lawspdfs/4.60.pdf](http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/4.60.pdf)

<sup>2</sup> <http://www.ttparliament.org/legislations/a2005-19.pdf>

<sup>3</sup> <http://www.ttparliament.org/legislations/a2005-32.pdf>

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	<ul style="list-style-type: none"> <li>✓ by inserting after section 5 a new section 5A; and</li> <li>✓ by repealing and replacing Part II of the First Schedule and also by adding a new Part III to the First Schedule</li> </ul> <p>Section 7 of the Act stipulated that Act No. 32 of 2005 would continue in force for a period of one (1) year.</p>	
<p><b>The Bail (Amendment) Act, 2006 (Act No. 30 of 2006)<sup>4</sup></b></p>	<p><b>Act No. 30 of 2006</b> provided for the provisions of <b>Act No. 32 of 2005</b> to continue in force for an additional period of one (1) year.</p>	
<p><b>The Bail (Amendment) Act, 2007 (Act No. 10 of 2007)<sup>5</sup></b></p>	<p><b>Act No. 10 of 2007</b> amended the Bail Act by making the offences of kidnapping for ransom or knowingly negotiating to obtain a ransom under the Kidnapping Act, 2003 (Act No. 21 of 2003) non-bailable offences for a period of sixty days, but thereafter bail may be granted at the discretion of the High Court.</p> <p>The Act also made certain violent offences (including possession of a firearm or ammunition without licence, certificate or permit under the Firearms Act, Chap. 16:01, or trafficking in a dangerous drug or being in possession of a dangerous drug for the purpose of trafficking under the Dangerous Drugs Act, 1991, (Act No. 38 of 1991), or kidnapping at common law or assault occasioning grievous bodily harm) non-bailable offences where a person has been convicted on two prior occasions for any of those offences or a combination of those offences arising from a</p>	

<sup>4</sup> <http://www.ttparliament.org/legislations/a2006-30.pdf>

<sup>5</sup> <http://www.ttparliament.org/legislations/a2007-10.pdf>

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	<p>single incident.</p> <p>Section 7 of the Act stipulated that Act No. 32 of 2005 would continue in force for a period of two (2) years.</p>	
<p><b>The Bail (Amendment)(No.2) Act, 2007 (Act No. 15 of 2007)<sup>6</sup></b></p>	<p><b>Act No. 15 of 2007</b> provided for the provisions of <b>Act No. 32 of 2005</b> to continue in force for an additional period of three (3) months.</p> <p>This Act amended the Bail Act by making the offences of kidnapping for ransom or knowingly negotiating to obtain a ransom under the Kidnapping Act, 2003 (Act No. 21 of 2003) non-bailable offences for a period of sixty days, but thereafter bail may be granted at the discretion of the High Court.</p> <p>The Act also made certain violent offences (including possession of a firearm or ammunition without licence, certificate or permit under the Firearms Act, Chap. 16:01, or trafficking in a dangerous drug or being in possession of a dangerous drug for the purpose of trafficking under the Dangerous Drugs Act, 1991, (Act No. 38 of 1991), or kidnapping at common law or assault occasioning grievous bodily harm) non-bailable offences where a person has been convicted on two prior occasions for any of those offences or a combination of those offences arising from a single incident.</p>	<p><b>Section 7 of the Act stipulated that Act No. 15 of 2007 would continue in force for a period of three (3) months.</b></p>
<p><b>The Bail (Amendment)(No.3) Act, 2007 (Act No. 25 of 2007)<sup>7</sup></b></p>	<p><b>Act No. 25 of 2007</b> amended the Bail Act as follows:</p> <ul style="list-style-type: none"> <li>✓ made the offences of kidnapping for ransom or knowingly negotiating to obtain a ransom under the Kidnapping Act, Chap. 11:26, non-bailable offences for a period of sixty days; thereafter bail</li> </ul>	

<sup>6</sup> <http://www.ttparliament.org/legislations/a2007-15.pdf>

<sup>7</sup> <http://www.ttparliament.org/legislations/a2007-25.pdf>

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	<p>may be granted at the discretion of the High Court.</p> <ul style="list-style-type: none"> <li>✓ made certain violent offences (including possession of a firearm or ammunition without licence, certificate or permit under the Firearms Act, Chap. 16:01, or trafficking in a dangerous drug or being in possession of a dangerous drug for the purpose of trafficking under the Dangerous Drugs Act, Chap. 11:25, or kidnapping at common law or assault occasioning actual bodily harm) non-bailable offences where a person has been convicted on two prior occasions for any of those offences or a combination of those offences arising from a single incident.</li> </ul>	
<p><b>The Bail (Amendment) Act, 2008 (Act No. 17 of 2008)<sup>8</sup></b></p>	<p><b>Act No. 17 of 2008</b> amended the Bail Act as follows:</p> <ul style="list-style-type: none"> <li>✓ made the offences of kidnapping for ransom or knowingly negotiating to obtain a ransom under the Kidnapping Act, Chap. 11:26, non-bailable offences for a period of sixty days; thereafter bail may be granted at the discretion of the High Court.</li> <li>✓ made certain violent offences (including possession of a firearm or ammunition without licence, certificate or permit under the Firearms Act, Chap. 16:01, or trafficking in a dangerous drug or being in possession of a dangerous drug for the purpose of trafficking under the Dangerous Drugs Act, Chap. 11:25, or kidnapping at common law or assault occasioning actual bodily harm) non-bailable offences where a person has been convicted on two prior occasions for any of those offences or a</li> </ul>	<p><b>Act No. 17 of 2008 amended the Bail Act by substantially re-enacting the provisions of Act No. 32 of 2005 but with minor changes to subsection 5(4) of the Schedule.</b></p> <p><b>By section 7, Act No. 17 of 2008 would continue in force for a period of five (5) years from the date of its commencement from September 19, 2008 to September 20, 2013</b></p>

<sup>8</sup> <http://www.ttparliament.org/legislations/a2008-17.pdf>

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	<p>combination of those offences arising from a single incident.</p> <p>Section 7 of the Act stipulated that Act No. 17 of 2008 would continue in force for a period of five (5) years.</p>	
<p><b>The Miscellaneous Provisions (Kidnapping and Bail) Act, 2011 (Act No. 9 of 2011)<sup>9</sup></b></p>	<p><b>Act No. 9 of 2011</b> amended section 5A of the Bail Act by increasing the number of days before which a person charged with the offence can be entitled to make an application to a Judge in Chambers for bail from sixty (60) to one hundred and twenty (120) days.</p>	
<p><b>The Bail (Amendment) Act, 2011 (Act No. 11 of 2011)<sup>10</sup></b></p>	<p><b>Act No. 11 of 2011</b> amended the Bail Act by conferring on a Court the jurisdiction to deny bail to a person charged with an offence under the Anti-Gang Act who is charged for certain offences involving a firearm .</p> <p>It provides that a Court shall not grant bail to a gang member in two categories:</p> <ul style="list-style-type: none"> <li>✓ where he is charged for an offence listed in Part II or Part III of the First Schedule of the Act and has one previous conviction for a similar offence within the last ten years, and</li> <li>✓ where he has at least two pending charges for offences listed in Part II or Part III of the First Schedule of the Act.</li> </ul> <p>However, where no evidence is taken in relation to the charge against the person within one hundred and twenty (120) days, bail may be granted at the discretion of the High Court.</p> <p>The Act also included all the substantive offences under the Anti-Gang Act, 2011, as specified offences under Part II of the First</p>	<p><b>By section 8, Act No. 11 of 2011 would continue in force for a period of five (5) years from the date of its commencement</b></p>

<sup>9</sup> <http://www.ttparliament.org/legislations/a2011-09.pdf>

<sup>10</sup> <http://www.ttparliament.org/legislations/a2011-11.pdf>

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	Schedule.  Section 8 of the Act stipulated that Act No. 11 of 2011 would continue in force for a period of five (5) years.	
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**WHAT IS THE PURPOSE OF THE BILL?**

- ✓ The Bill seeks to amend the Bail Act, Chapter 4:60 by amending the First Schedule of the Act and substituting a new list of offences for which a person who is charged for any such offence and who has a previous conviction for any such offence during the last ten (10) years will not be entitled to be granted bail.
- ✓ The Bill also provides that where a matter has not started after one hundred and twenty (120) days a person charged under this new Schedule is entitled to apply to a Judge to be granted bail.

**RELATIVE LEGISLATION MENTIONED IN THE BILL**

- ✓ Bail Act Chapter 4:60;
- ✓ The Bail (Amendment) Act No. 17 Of 2008;
- ✓ The Bail (Amendment) Act No. 11 Of 2011; and
- ✓ Anti-Gang Act, 2011.

**KEY FEATURES OF THE PROPOSED LEGISLATION**

The Bill:

- ✓ is inconsistent with Sections 4 and 5 of the Constitution and therefore needs to be passed by a three-fifths majority in both Houses of Parliament;
- ✓ will repeal the existing subsections (2) to (10) of Section 5 of the Bail Act (subsections (4) to (10) of the Act were included by amendments introduced by Act No. 17 of 2008 and Act No. 11 of 2011);
- ✓ will continue in force for a period of three (3) years from the date of its commencement;
- ✓ will insert new subsections which will provide that:
  - a person over 18 years who have been convicted of any offence listed in Part II of the First Schedule will not be granted bail.
  - a person who is charged with an offence listed in Part II of the First Schedule within ten (10) years of completing a sentence in respect of a previous conviction for an offence listed in Part II of the First Schedule will not be granted bail.

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- a person charged with an offence listed in Part II of the First Schedule are entitled to make an application to a Judge for bail once no evidence has been taken by the Court within one hundred and twenty days of the charge being read.
- a parent or guardian of a child who is charged with his/ her kidnapping as provided for in Section 10(1) of the Anti-Gang Act, 2011, and who has no evidence taken within sixty days of the charge being read will be allowed to apply to a Judge for bail.
- ✓ deletes Parts II and III of the First Schedule of the Bail Act Chap 4:60 and provide for a new Part II consisting of most of the offences listed in Parts II and III of the Bail Act Chap 4:60 (amended by Act No. 17 of 2008 Act No. 11 of 2011) with the exception of following offences:
  - sexual intercourse with female under fourteen;
  - sexual intercourse with female between fourteen and sixteen;
  - sexual intercourse with male under sixteen; and
  - sexual intercourse with an adopted minor.
- ✓ includes in Part II any offence under the Children Act or any Act that repeals and replaces it.

**COMPARISON OF SIMILAR LEGISLATION IN OTHER JURISDICTIONS**

<b>COUNTRY</b>	<b>SIMILAR LEGISLATION</b>	<b>REMARKS</b>
<b>United Kingdom</b>	<ul style="list-style-type: none"> <li>- <i>Bail Act 1976 (The Act)<sup>1</sup>;</i></li> <li>- <i>Bail (Amendment) Act 1993 (The BAA)<sup>2</sup>;</i></li> <li>- <i>Magistrates' Court Act 1980;<sup>3</sup></i></li> <li>- <i>Magistrates' Court Rules 1981;</i></li> <li>- <i>Supreme Court Act 1981<sup>4</sup>;</i></li> <li>- <i>Rules of the Supreme Court;</i></li> <li>- <i>Criminal Procedure Rules 2005;</i></li> <li>- <i>Police and Criminal Evidence Act 1984; (PACE)<sup>1</sup></i></li> </ul>	<p><i>An Act to make provision in relation to bail in or in connection with criminal proceedings in England and Wales, to make it an offence to agree to indemnify sureties in criminal proceedings, to make provision for legal aid limited to questions of bail in certain cases and for legal aid for persons kept in custody for inquiries or reports, to extend the powers of coroners to grant bail and for connected purposes.</i></p>

<sup>1</sup> <http://www.legislation.gov.uk/ukpga/1976/63>

<sup>2</sup> <http://www.legislation.gov.uk/ukpga/1993/26/data.pdf>

<sup>3</sup> <http://www.legislation.gov.uk/ukpga/1980/43/data.pdf>

<sup>4</sup> [http://www.legislation.gov.uk/ukpga/1981/54/pdfs/ukpga\\_19810054\\_en.pdf](http://www.legislation.gov.uk/ukpga/1981/54/pdfs/ukpga_19810054_en.pdf)

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	- <i>The Consolidated Criminal Practice Direction amended and reissued 18 May 2004, I.13, III.25, IV.50 and V.53</i>	
<b>Australia</b>	Bail Bill 2013 <sup>2</sup>	<i>A Bail Bill, 2013 replaces the Bail Act, 1978. It was introduced into NSW Parliament by the NSW Attorney-General on 1 May 2013. The Bill passed both houses of Parliament and was assented to on 27 May 2013. It is due to commence in May 2014.</i>
<b>New South Wales</b>	Bail Act, 1978 <sup>3</sup>	
<b>Antigua and Barbuda</b>	The Magistrate's Code of Procedure (Amendment) Act, 2004. <sup>4</sup> replaces the Magistrates Code of Procedure Act cap. 255 <sup>5</sup>  The Police Act cap.330 <sup>6</sup>  Eastern Caribbean Supreme Court Act cap 143 <sup>7</sup>	<i>Section 18 provides for a list of offences for which the magistrate cannot admit bail.  Specifically prohibits magistrates from granting bail to a person charged with murder, treason, certain offences against the Firearms Act and all offences under the Sexual Offences Act  Prison overcrowding was attributed in part to a law that limits the ability of magistrates to grant bail to those accused of certain offenses</i>
<b>Bahamas</b>	Bail Act Ch. 103 <sup>8</sup>	<i>An Act to consolidate the law relating to the release from custody of accused persons in criminal proceedings and for other matters connected thereto.</i>
<b>Canada</b>	Bail Act R.S.O. 1990, CHAPTER B.1 <sup>9</sup>	<i>The <u>Canadian constitution</u><sup>1</sup> guarantees the right not to be denied reasonable bail without just</i>

<sup>1</sup> <http://www.legislation.gov.uk/ukpga/1984/60/data.pdf>

<sup>2</sup> <http://www.austlii.edu.au/cgi-bin/download.cgi/cgi-bin/download.cgi/download/au/legis/nsw/bill/bb201351.pdf>

<sup>3</sup> <http://aic.gov.au/documents/9/A/D/%7B9AD567E5-0F36-4EEB-92C0-739F1E25537E%7Dbail.pdf>

<sup>4</sup> <http://www.laws.gov.ag/acts/2004/a2004-13.pdf>

<sup>5</sup> <http://www.laws.gov.ag/acts/chapters/cap-255.pdf>

<sup>6</sup> <http://www.laws.gov.ag/acts/chapters/cap-330.pdf>

<sup>7</sup> <http://www.laws.gov.ag/acts/chapters/cap-143.pdf>

<sup>8</sup> [http://laws.bahamas.gov.bs/cms/images/LEGISLATION/PRINCIPAL/1994/1994-0020/BailAct\\_1.pdf](http://laws.bahamas.gov.bs/cms/images/LEGISLATION/PRINCIPAL/1994/1994-0020/BailAct_1.pdf)

<sup>9</sup> <http://www.canlii.org/en/on/laws/stat/rso-1990-c-b1/latest/rso-1990-c-b1.html>

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		<i>cause.</i>
<b>Guyana</b>	<p>Criminal Law Procedure Act, Cap 10:01<sup>2</sup></p> <p>Court of Appeal Act Cap 3:01<sup>3</sup></p> <p>Police Act cap 16:01<sup>4</sup></p>	<p><i>Sec 14 outlines the right of a prisoner in certain cases to be tried or bailed</i></p> <p><i>Title 6 treats with Bail</i></p> <p><i>The Court of Appeals Act provides for in Section 17 Admission of appellant to Bail and custody when attending court</i></p> <p><i>Section 20 provides for Bail of persons arrested without a warrant</i></p>
<b>India</b>	Code of Criminal Procedure, 1973 Act, <sup>5</sup>	<i>Provides forailable offences and nonailable offences</i>
<b>Jamaica</b>	<p>The Bail Act<sup>6</sup></p> <p>The Bail (Amendment) Act, 2010<sup>1</sup></p>	<p><i>The Bail Act has 22 sections among the issues to which it refers are entitlement to bail, circumstances in which bail may be denied, general provisions relating to bail and the power of the judge in chambers.</i></p> <p><i>The Bail (Amendment) Act, 2010 outlines offences requiring special provisions for the grant of Bail among other things.</i></p>

<sup>1</sup>[http://en.wikipedia.org/wiki/Section\\_Eleven\\_of\\_the\\_Canadian\\_Charter\\_of\\_Rights\\_and\\_Freedoms#Right\\_not\\_to\\_be\\_denied\\_reasonable\\_bail](http://en.wikipedia.org/wiki/Section_Eleven_of_the_Canadian_Charter_of_Rights_and_Freedoms#Right_not_to_be_denied_reasonable_bail)

<sup>2</sup> [http://www.oas.org/juridico/spanish/mesicic2\\_guy\\_criminal\\_proc\\_act.pdf](http://www.oas.org/juridico/spanish/mesicic2_guy_criminal_proc_act.pdf)

<sup>3</sup> <http://guyaneselawyer.com/lawsofguyana/Laws/cap301.pdf>

<sup>4</sup> <http://www.humanrightsinitiative.org/programs/aj/police/legislation/guyana/cap1601policeact.pdf>

<sup>5</sup> <http://www.oecd.org/site/adboecdanti-corruptioninitiative/46814340.pdf>

<sup>6</sup> [http://moj.gov.jm/sites/default/files/laws/Bail%20Act\\_0.pdf](http://moj.gov.jm/sites/default/files/laws/Bail%20Act_0.pdf)

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<b>New Zealand</b>	Bail Act, 2000 <sup>2</sup> Bail (Amendment) Act, 2011 <sup>3</sup> Bail (Amendment) Act, 2013 <sup>4</sup>	<i>The new legislation would require that a person on a murder charge or repeat violence, drugs or sex charges would have to persuade a judge that the community would be safe if they were released.</i>  <i>It would also make it more difficult for young, repeat offenders to get bail, and allow police to arrest people who repeatedly breached bail without a warrant.</i>
<b>St. Lucia</b>	Criminal Code 2004 <sup>5</sup>	<i>CHAPTER THREE Procedure PART I treats with ARREST AND BAIL</i>
<b>United States</b>	Sixth Amendment to constitution  Bail Reform Act of 1966  The Bail Reform Act of 1984	<i>Mandates that a suspect must “be informed of the nature and cause of the accusation” so as to enable the person to seek bail. - See more at: <a href="http://bail.uslegal.com/#sthash.W9f5eacQ.dpuf">http://bail.uslegal.com/#sthash.W9f5eacQ.dpuf</a></i>  <i>The Bail Reform Act of 1984 replaces the Bail Reform Act of 1966</i>

<sup>1</sup> [http://www.japarliament.gov.jm/attachments/341\\_The%20Bail%20%28Amendment%29%20Act,%202010.pdf](http://www.japarliament.gov.jm/attachments/341_The%20Bail%20%28Amendment%29%20Act,%202010.pdf)

<sup>2</sup> <http://www.legislation.govt.nz/act/public/2000/0038/latest/DLM68380.html>

<sup>3</sup> <http://www.legislation.govt.nz/act/public/2011/0082/latest/DLM4057401.html>

<sup>4</sup> <http://www.legislation.govt.nz/act/public/2013/0066/latest/whole.html>

<sup>5</sup> <http://www.legislation.govt.nz/act/public/2011/0082/latest/DLM4057401.html>

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**CONSIDERATIONS**

The Bill:

- ✓ is inconsistent with Sections 4 and 5 of the Constitution and therefore needs to be passed by a three-fifths majority in both Houses of Parliament;
- ✓ will remain in force for a period of three(3) years from the date of its commencement;
- ✓ excludes some offences in the amended First Schedule that are currently provided for in the Bail Act;
- ✓ prohibits the granting of bail to repeat offenders charged with certain offences; and
- ✓ varies the current arrangement for the entitlement of a person to apply for bail if a matter does not commence after a specified period of time.

Please take the opportunity to access the Bill via the link provided <http://www.ttparliament.org/legislations/b2013h11.pdf> and feel free to submit your comments and concerns to the Parliament via our website.

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