

Amendment
of section 10
of principal
Act.

3. Section 10 of the principal Act is amended by—
(a) renumbering the section as subsection (1); and
(b) inserting next after subsection (1), as renumbered, the following as subsections (2) to (5)—

(2) Where bail is granted to a defendant by a Court pursuant to this Act, the Director of Public Prosecutions may, in the manner set out in subsection (3), appeal to a judge of the Court of Appeal in Chambers in respect of the decision.

(3) Where the Director of Public Prosecutions intends to appeal a decision to grant bail to a defendant, the Director of Public Prosecutions shall—

(a) at the conclusion of the proceedings in which the decision was communicated and before the release from custody of the defendant give oral notice to the Court of that intention; and

(b) give to the Court and the defendant within twenty-four hours after the proceedings referred to in paragraph (a) a written notice of the appeal, setting out the reasons therefor.

A BILL

ENTITLED

AN ACT to Amend the Bail Act.

[]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, and by the authority of the same, as follows:—

1. This Act may be cited as the Bail (Amendment) Act, 2008, and shall be read and construed as one with the Bail Act (hereinafter referred to as the principal Act) and all amendments thereto.

Short title and construction.

2. Section 3 of the principal Act is amended by inserting next after subsection (4) the following as subsection (4A)—

Amendment of section 3 of principal Act.

“(4A) Bail shall be granted to a defendant in relation to an offence specified in the Second Schedule, only if the defendant satisfies the Court that bail should be granted.”.

Second Schedule.

Amendment
of section 10
of principal
Act.

3. Section 10 of the principal Act is amended by—

- (a) renumbering the section as subsection (1); and
- (b) inserting next after subsection (1), as renumbered, the following as subsections (2) to (6)—

“ (2) Where bail is granted to a defendant by a Court pursuant to this Act, the Director of Public Prosecutions may, in the manner set out in subsection (3), appeal to a Judge of the Court of Appeal in Chambers in respect of the decision.

(3) Where the Director of Public Prosecutions intends to appeal a decision to grant bail to a defendant, the Director of Public Prosecutions shall—

- (a) at the conclusion of the proceedings in which the decision was communicated and before the release from custody of the defendant, give oral notice to the Court of that intention; and
- (b) give to the Court and the defendant, within twenty-four hours after the conclusion of the proceedings referred to in paragraph (a), a written notice of the appeal, setting out the reasons therefor.

(4) Subject to subsection (5), upon the receipt of the oral notice referred to in subsection (3)(a), the Court shall remand the defendant in custody until the appeal is determined.

(5) Where the Director of Public Prosecutions fails to file a written notice of appeal in accordance with subsection (3)(b), the order for the grant of bail shall take immediate effect.

(6) The hearing of an appeal under this section shall be commenced within seventy-two hours (excluding Saturdays, Sundays and days declared to be Public General Holidays under section 2 of the Holidays (Public General) Act) after oral notice is given under subsection (3)(a).”

4. Section 17 of the principal Act is amended in subsection (2)(b), by deleting the word "Schedule" and substituting therefor the words "First Schedule".

Amendment of section 17 of principal Act.

5. The principal Act is amended by—

- (a) renumbering the Schedule as the First Schedule; and
- (b) inserting next after the First Schedule, as renumbered, the following as the Second Schedule—

Insertion of new Second Schedule in principal Act.

" SECOND SCHEDULE (Section 3)

Offences *Requiring Special Provision for the Grant of Bail*

Murder
Arson

- 1. Murder.
- 2. Any offence under section 2, 3 or 4 of the Treason Felony Act.
- 3. Any offence under section 3 of the Malicious Injuries to Property Act (arson of a dwelling house).
- 4. Any offence under section 42A of the Larceny Act (extortion).
- 5. Any offence under the following provisions of the Firearms Act, namely—
 - (a) section 4 (importation, exportation and trans-shipment of firearms or ammunition);
 - (b) section 9 (manufacture or dealing in firearms or ammunition or prohibited weapons);
 - (c) section 10 (acquisition or disposal of firearms or ammunition or prohibited weapons);
 - (d) section 20 (possession of firearms or ammunition, restricted or prohibited weapons);
 - (e) section 24 (possession of firearm or ammunition with intent to injure); or
 - (f) section 25 (use or possession of firearm or imitation firearm in certain circumstances).
- 6. Any offence under the following provisions of the Offences Against the Person Act, namely—
 - (a) section 8 (conspiring or soliciting to commit murder);

- (b) section 13 (administering poison or wounding with intent to murder);
- (c) section 14 (destroying or damaging building with intent to murder);
- (d) section 15 (setting fire to ship, etc. with intent to murder);
- (e) section 16 (attempting to administer poison, etc. with intent to murder);
- (f) section 17 (by other means attempting to commit murder); or
- (g) shooting or attempting to shoot or wound with intent to do grievous bodily harm or with intent to resist or prevent the lawful apprehension or detainer of any person; or wounding with intent, using a firearm under section 20.

7. Any offence under the following provisions of the Dangerous Drugs Act, namely—

- (a) section 3 (import and export of raw opium and coca leaves);
- (b) section 5 (cultivation of opium or coca leaves);
- (c) section 6 (import or export of prepared opium);
- (d) section 7 (manufacturing, selling, using, etc. prepared opium);
- (e) section 7A (import or export of ganja);
- (f) section 7B (cultivation, selling or dealing in or transporting ganja);
- (g) section 8 (import or export of cocaine, or other applicable drug);
- (h) section 8A (cultivating, selling or dealing in or transporting cocaine, or other applicable drug);
- (i) section 9 (manufacture and sale of cocaine, or other applicable drug);
- (j) section 11 (trade in manufacture of new drugs); or
- (k) section 21A (using the postal services for drugs).

8. Any offence under section 4 of the Trafficking in

8. Any offence under section 4 of the Trafficking in Persons (Prevention, Suppression and Punishment) Act.

9. Any offence under section 10 of the Child Care and Protection Act (trafficking of children).

10. Any offence under the following provisions of the Offences Against the Person Act, namely—

- (a) section 44 (rape);
- (b) section 45, 47, 48 or 50 (procuring defilement of girl under eighteen; defilement of female, etc.; carnally knowing girl under twelve; or above twelve and under sixteen, respectively);
- (c) section 53 (indecent assault, etc.);
- (d) section 56 or 57 (forcible abduction or abduction of girl under sixteen, respectively);
- (e) section 58 (procuration);
- (f) section 59 (procuring defilement of women by threats or fraud, or administering drugs);
- (g) section 60 (abduction of girl under eighteen with intent to have carnal knowledge);
- (h) section 61 (unlawful detention with intent to have carnal knowledge);
- (i) section 69 (child stealing); or
- (j) section 70 (kidnapping).

11. Perverting the course of justice.”.

MEMORANDUM OF OBJECTS AND REASONS

A decision has been taken to amend the Bail Act in order to—

- (a) provide in the case of specified offences for the onus to be on the defendant to satisfy the Court that bail should be granted; and
- (b) confer upon the Director of Public Prosecutions, a right of appeal in cases where bail is granted by a Court.

This Bill seeks to give effect to that decision and is a companion to other proposed legislation aimed at reducing crime.

DOROTHY C. LIGHTBOURNE, Q.C.
Minister of Justice.

A BILL

ENTITLED

AN ACT to Amend The Bail Act.

As introduced by the Honourable Minister of Justice.

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SECTION 3 OF THE PRINCIPAL ACT WHICH
IT IS PROPOSED TO AMEND

3.—(1) Subject to the provisions of this Act, every person who is charged with an offence shall be entitled to be granted bail by a Court, a Justice of the Peace or a police officer, as the case may require.

(2) A person who is charged with an offence shall not be held in custody for longer than twenty-four hours without the question of bail being considered.

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SECTION 10 OF THE PRINCIPAL ACT WHICH
IT IS PROPOSED TO AMEND

10. A defendant to whom section 9 applies may appeal to a Right or Judge in Chambers.

SECTION 17 OF THE PRINCIPAL ACT WHICH
IT IS PROPOSED TO AMEND

17.—(1) This section applies where a person is granted bail in criminal proceedings on condition that he provides surety for the purpose of securing his surrender to custody.

(2) In considering the suitability of a proposed surety referred to in subsection (1)—

(a) regard shall be had to such factors as the Court thinks fit, including—

- (i) the surety's profession, occupation, trade or business;
- (ii) his character and his previous convictions, if any;
- (iii) his proximity, whether of kinship, place of residence or otherwise, to the person for whom he is to be a surety; and

(b) the surety shall be required to make a declaration in the form set out in the Schedule.

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