

*Curran*

*9/12/18*

# REPORT

OF THE

JOINT SELECT COMMITTEE

ON ITS DELIBERATIONS ON THE BILLS ENTITLED:

AN ACT TO AMEND THE BAIL ACT

AN ACT FURTHER TO AMEND THE FIREARMS ACT

AN ACT TO AMEND THE OFFENCES AGAINST THE PERSON ACT

AN ACT TO AMEND THE PAROLE ACT

AN ACT TO MAKE INTERIM PROVISION IN RELATION TO THE GRANT OF  
BAIL IN SPECIFIED CIRCUMSTANCES AND

AN ACT TO MAKE INTERIM PROVISION EXTENDING THE POWERS OF  
ARREST AND DETENTION UNDER SECTIONS 50B AND 50F OF THE  
CONSTABULARY FORCE ACT

December 2008

Members of the Honourable House are reminded that, on September 9, 2008 the Acting Leader of the House and Minister of State in the Ministry of Labour and Social Security having obtained suspension of the Standing Orders, on behalf of the Prime Minister, moved the following resolution:

**BE IT RESOLVED** that this Honourable House appoint a Committee comprising of the following Members:

Hon. Pearnel Charles  
Hon. Laurence Broderick  
Hon. Daryl Vaz  
Dr. St. Aubyn Bartlett  
Dr. Peter Phillips  
Mr. Fitz Jackson  
Mrs. Sharon Hay-Webster

To sit jointly with a similar Committee to be appointed by the Senate to consider and report on the following Bills entitled:

1. **An Act to Amend the Bail Act**
2. **An Act Further To Amend the Firearms Act**
3. **An Act to Amend the Offences Against the Person Act**
4. **An Act to Amend the Parole Act**
5. **An Act to Make Interim Provision in Relation to the Grant of Bail in Specified Circumstances**
6. **An Act to Make Interim Provision Extending the Powers of Arrest and Detention Under Sections 50B And 50F of the Constabulary Force Act**

On September 12, 2008, the Senate on a motion moved by the Attorney General, Minister of Justice and Leader of Government Business passed a similar resolution and appointed the following members to serve on the Committee:

*Sen. the Hon. Dorothy Lightbourne - Chairman*

Sen. the Hon. Colonel Trevor MacMillan

Sen. the Hon. Arthur Williams

Sen. Tom Tavares-Finson

Sen. Arnold J. Nicholson

Sen. Keith D. Knight

Sen. Mark Golding

On September 23, 2008, the Honourable House on a motion by the Acting Leader of the House, having obtained suspension of the Standing Orders moved a further resolution to delete the names "Sharon Hay-Webster" and "Fitz Jackson" and substitute the names "Robert Pickersgill" and "Ronald Thwaites" therefor.

Your Committee began its deliberations on the Bills on September 16, 2008 and held a total of 6 meetings, the last of which took place on October 24, 2008. (*Appendix I*)

The Ministry of Justice in anticipation that the Bills would require public support and consultation placed a Public Notice in the Sunday Gleaner and the Sunday Observer dated September 14, 2008, inviting written submissions from individuals and organizations. The subject matters covered in the Bills generated a great deal of public interest and participation, and submissions were received from various organizations as well as individuals in the legal fraternity. These include the following:

- The Jamaican Bar Association
- The Independent Jamaican Council for Human Rights (1998) Ltd.
- The Farquharson Institute of Public Affairs
- Jamaicans for Justice
- Mrs. Yvonne McCalla Sobers, Human Rights Advocate
- Mr. Earl Witter, Q.C., The Public Defender
- Mr. Oswald James, James and Company
- Mr. Howard Hamilton, Q.C.
- Mr. Patrick Atkinson, Attorney-at-Law
- Mrs. Valerie Neita-Robertson, Attorney-at-Law

- Lawyers' Christian Fellowship

Oral presentations were heard from all the individuals and organizations that made submission except for the Lawyers' Christian Fellowship whose written submission was received very late. The Director of Public Prosecutions and representatives from the Jamaica Constabulary Force were specially requested by your Committee to make presentations of empirical data evidencing the crime situation in the country.

Your Committee also received technical assistance from representatives of the Office of the Parliamentary Counsel, the Attorney General's Chambers, the Legal Reform Department, the Ministry of National Security, the Ministry of Justice and the Office of the Director of Public Prosecutions.

## 1. OVERVIEW

Your Committee was convened to consider and report on six (6) pieces of legislation which arose out of bipartisan meetings between the Government and the Opposition in response to the rising crime rate particularly in relation to gun offences. The Bills considered are An Act to Amend the Bail Act; And Act Further to Amend the Firearms Act; An Act to Amend the Offences Against the Person Act; An Act to Amend the Parole Act; An Act to Make Interim Provision in Relation to the Grant of Bail in Specified Circumstances and An Act to Make Interim Provision Extending the Powers of Arrest and Detention under Sections 50B and 50F of the Constabulary Force Act. (*Appendix II to VII*)

The provisions in the Bills were developed from agreements reached between the Government and the Opposition at meetings held during the Vale Royal Talks. Your Committee took note of the Chairman's statement that it was the view of both the Government and the Opposition during those meetings that the provisions of these Bills were necessary to respond to the unprecedented levels of crime in the country. The Chairman also advised your Committee that the purpose of the bills as proposed is to strengthen policing capabilities and intensify crime prevention and apprehension operations.

Two (2) of the Bills "An Act to make Interim Provision in Relation to the Grant of Bail in Specified Circumstances" and "An Act to make Interim Provision Extending the Powers of Arrest and Detention under Sections 50B and 50F of the Constabulary Force Act" are governed by Section 50 of the Constitution and therefore require a two-thirds majority vote for passage in both Houses of Parliament. The Committee Chairman further informed your Committee that the bipartisan support required for passage of these two bills was given during the Vale Royal Talks.

Your Committee took the decision that they would consider the four (4) Bills which proposed permanent amendments to the relevant law before considering the two (2) interim Bills which both contain sunset clauses such that the provisions expire after a period of one (1) year. The two (2) interim Bills relate to the Bail Act and the Constabulary Force Act. The Parole Amendment Bill, the Firearms Amendment Bill and the Offences Against the Person Amendment Bill respectively, deal primarily with issues relating to sentencing. The Bail Amendment Bill seeks to amend the Bail Act to provide that in relation to certain specified offences the onus is placed on the defendant to satisfy the Court that bail should be granted and also to confer upon the Director of Public Prosecutions a right of appeal where bail is granted by the Court. The two (2) interim Bills relate to amendments governed by Section 50 of the Constitution which provides for the passage of Special Acts of Parliament to deal with provisions that may be inconsistent with the fundamental rights and freedoms guaranteed by sections 13 to 26 of the Constitution.

Your Committee in considering the Bills reviewed similar legislation from other Commonwealth countries which it felt would assist in its deliberations. The presentations made by the various groups and individuals also greatly assisted your Committee in arriving at its conclusions.

Your Committee has the honour to present its findings and recommendations on the Bills.

## 2. FINDINGS AND RECOMMENDATIONS

### 2.1 An Act Further to Amend the Firearms Act

Your Committee recognizes that the proposed amendment would be the second amendment to the Firearms Act that would have been taken to Parliament in the current legislative session and therefore it was described as *An Act Further to Amend the Firearms Act*. The earlier amendment dealt with issues relating to firearm licensing arrangements.

#### Clause 1

Clause 1 cites the short title and the construction of the Bill.

**Your Committee recommends this provision.**

#### Clause 2

This Clause seeks to amend Section 4 of the principal Act in paragraphs (a)(ii), (b)(ii) and (c)(ii), of subsection (2) which deals with the penalties attached to the illegal importation and exportation of firearms or ammunition. The amendment is an insertion immediately after the word "life", in each case, of the words "**or such other term, being not less than fifteen years, as the Court considers appropriate**".

The proposed provisions would read at paragraphs (a)(ii), (b)(ii) and (c)(ii) in subsection (2) of Section 4:

**"on conviction before a Circuit Court to imprisonment for life or such other term, being not less than fifteen years, as the Court considers appropriate with or without hard labour;"**

### Clause 3

This Clause seeks to amend paragraphs (a) (ii) and (b) (ii) of subsection (2) of Section 9 of the Principal Act which deals with the penalties attached to the illegal manufacture or dealing in illegal firearms or ammunition as well as prohibited weapons. The amendment is an insertion immediately after the word "life", in each case of the words **"or such other term, being not less than fifteen years, as the Court considers appropriate"**.

The proposed provision would be similar to that of Clause 2.

### Clause 4

Clause 4 of the Bill seeks to amend paragraphs (a) (ii) of Subsection (7) of Section 10 of the Principal Act. Section 10 provides for the purchase, acquisition, sale or transfer of restricted weapons. The amendment would require inserting immediately after the word "life" the words **"or such other term, being not less than fifteen years, as the Court considers appropriate"**.

The proposed provision would be similar to that of Clause 2.

### Clause 5

Clause 5 proposes an amendment to paragraphs (a)(ii), (b)(ii) and (c)(ii) of subsection (4) of Section 20 of the Principal Act which set out the penalties for the offences described in Section 20. Section 20 deals with the offence of possession of prohibited or restricted weapons. The amendment would require inserting immediately after the word "life" the words **"or such other term, being not less than fifteen years, as the Court considers appropriate"**.

The proposed provision would be similar to that of Clause 2.

### Clause 6

Clause 6 proposes amendment to Section 24 (b) of the Principal Act. Section 24 deals with the possession of firearm or ammunition with the intent to endanger life or cause serious injury to person or property. The amendment is an insertion immediately after the word "life" of the words **"or such other term, being not less than fifteen years, as the Court considers appropriate"**.

The proposed provision would be similar to that of Clause 2.

### Clause 7

Clause 7 of the Bill proposes amendment to subsection 3(b) of Section 25 of the Principal Act. This Section provides for the offence of making or attempting to make use of firearms or imitation firearms with the intent to commit a felony or to resist or prevent the lawful apprehension or detention of the accused or some other person. The amendment is an insertion immediately after the word "life" the words **"or such other term, being not less than fifteen years, as the Court considers appropriate"**.

The proposed provision would be similar to that of Clause 2.

The amendments in Clauses 2 through 7 of the Bill were similar and evoked vibrant discussion from persons making submissions as well as the members of your Committee. Several groups and individuals expressed the view that the amendments had the effect of removing the discretion of the judiciary in sentencing matters. Many felt that such a step would preclude a judge from handing down sentences based on each case's own unique set of circumstances. Some Opposition members of your Committee shared this concern and questioned whether these amendments would be likely to withstand legal challenge.

The Chairman reminded your Committee that a previous Parliament had amended the Offences Against the Person Act to include provisions similar to those contemplated in this Bill. However, one Opposition member pointed out that in that instance those provisions had



been subject to Privy Council review and although initially had the support of the Privy Council, the rulings were eventually reversed. As such, the Member cautioned your Committee to be guided by those rulings. The Chairman also reminded your Committee that the amendments incorporating mandatory minimum sentences were being imposed solely in relation to offences that were already subject to life imprisonment. The Chief Parliamentary Counsel pointed out also that the amendments were being made not according to the type of offence but rather according to the gravity of the offence.

Some groups submitted to your Committee that matters involving sentencing were the purview of the Judiciary and not the Legislature and as such the amendments proposed in this Bill ran contrary to the principle of separation of powers. One group expressed the view that mandatory sentences offended the Constitution as well as international human rights law and questioned whether there was data that indicated that fifteen (15) year sentences would have the effect of reducing the crime level.

Opposition members raised concerns over the disproportionality of the mandatory minimum sentences as attached to certain offences. They cited as examples the attachment of a mandatory minimum sentence of fifteen (15) years to offences involving restricted weapons such as those designed to discharge a noxious liquid or gas. They also cited the example of a man who uses a machete to chop another versus one who merely intends to endanger a man's life. They pointed out that in the first instance a person would be subject to a life sentence and eligible for parole after seven years, while in the second instance a person would receive a minimum sentence of fifteen (15) years. Opposition members argued that such matters should be subject to the discretion of the Judge rather than that discretion being exercised by the Prosecution in deciding the Court in which to prosecute and therefore ultimately the sentence that would apply. Another Opposition member suggested based on his colleagues' concern, that a provision, such as in the Trinidad and Tobago legislation regarding sentences for life and sentences for the rest of the *natural* life, could be considered for the amendments to the legislation. He made the point that in the sentence for life, parole could be applied for after serving about seven years of the sentence but in the sentence for *natural* life a proviso could be placed which would stipulate the time within which parole could be applied for.

The Solicitor General advised your Committee that concerns raised by the Opposition members about the violation of the separation of powers doctrine were not implicated by the cited examples since the examples dealt with the issue of proportionality of sentences to offences and not with the legality of the Legislature prescribing minimum sentences. He further opined that no firm authority existed which stipulated that in prescribing minimum sentences the Legislature would be breaching the separation of powers doctrine.

One Opposition member was concerned about the constitutionality of the Court imposing the minimum sentence of fifteen years in every circumstance which could constitute a firearm offence, given the range of circumstances that constituted such offences. The member suggested that some vestigial discretion be provided to the Court to allow it to depart from the fifteen year minimum sentence where there were extenuating circumstances.

**Given the range of opposing views on Clauses 2 through 7 your Committee was unable to arrive at a consensus recommendation on these Clauses and therefore asks that the Parliament give consideration to the suggestions made during their deliberations in informing their decision on this Bill.**

## **2.2 An Act to Amend the Offences Against the Person Act**

### Clause 1

This Clause cites the short title and construction of the Bill.

**Your Committee recommends this provision.**

### Clause 2

This Clause seeks to amend Section 20 of the Principal Act. Particularly, it provides that those offences under Section 20 which involve the use of a firearm will be subject to a mandatory minimum sentence of fifteen years upon conviction. The new Section 20 would accordingly read as follows:

- (1) Subject to subsection (2), whosoever shall unlawfully and maliciously, by any means whatsoever, wound, or cause any grievous bodily harm to any person, or shoot at any person, or, by drawing a trigger, or in any other manner attempt to discharge any kind of loaded arms at any person, with intent in any of the cases aforesaid, to maim, disfigure or disable any person, or to do some other grievous bodily harm to any person, or with intent to resist or prevent the lawful apprehension or detainer of any person, shall be guilty of felony, and, being convicted thereof, shall be liable, to be imprisoned for life with or without hard labour.
- (2) A person who is convicted before a Circuit Court of—
  - (a) shooting with intent to do grievous bodily harm or with intent to resist or prevent the lawful apprehension or detainer of any person; or
  - (b) wounding with intent, with the use of a firearm,shall be liable to imprisonment for life, or such other term, not being less than fifteen years, as the Court considers appropriate.
- (3) In this section, "firearm" has the meaning assigned to it by section 2 of the Firearms Act. "

During the deliberations on this Bill, issues regarding mandatory minimum sentences similar to those raised in relation to An Act Further to Amend the Firearms Act were again discussed. Jamaicans for Justice raised an additional point that mandatory minimum sentences lead to further burdens on the prison system by increasing the period of incarceration as well as the prison population.

Your Committee again held divergent views on this provision and did not reach a consensus recommendation. Your Committee therefore advises that Parliament consider the views expressed in the deliberations to inform their decision on this provision.

### 3.3 An Act To Amend The Parole Act

#### Clause 1

This Clause refers to the title and construction of the Bill.

**Your Committee recommends this Clause.**

#### Clause 2

This clause seeks to amend Section 6 of the Principal Act which deals generally with the period of time that an inmate must serve before being eligible for parole. In particular, the proposed amendment targets those inmates who have been sentenced to life imprisonment or those for whom a sentence of death has been commuted to life imprisonment. Currently, eligibility for parole for such inmates occurs after the inmate has served seven (7) years. This Bill therefore seeks to extend the period of incarceration before eligibility for parole to ten (10) years where an inmate is serving a sentence of life imprisonment, or a sentence of fifteen years or more, in relation to specified offences under the Firearms Act or certain offences under Section 20 of the Offences Against the Person Act

The amended section 6 of the Act would therefore read from subsection (4) as follows:

**(4) Subject to subsections (4A) and (5), an inmate --**

**(a) who has been sentenced to imprisonment for life; or**

**(b) in respect of whom --**

**(i) a sentence of death has been commuted to life imprisonment; and**

**(ii) no period has been specified pursuant to section 5A,**

**Shall be eligible for parole after having served a period of not less than seven years.**

**(4A) Subject to subsection (5), an inmate who has been sentenced to imprisonment for life, or for a period of fifteen years or more, for—**

- (a) any offence under section 4, 9, 10 (7) (a), 20 (4), 24 or 25 of the Firearms Act; or
- (b) any of the following offences referred to in section 20 (2) of the Offences Against the Person Act, namely—
- (i) shooting with intent to cause grievous bodily harm or with intent to resist or prevent the lawful apprehension or detainer of any person; or
  - (ii) wounding with intent, with use of a firearm,
- committed after the coming into operation of this Act, shall be eligible for parole after having served a period of not less than ten years.”

Concerns were raised by several groups and individuals regarding the removal of the discretion of the judiciary in applying a set period of incarceration before eligibility for parole, in relation to the offences specified. One group asserted that in so doing the Legislature was intimating a lack of confidence in the judiciary as well as diminishing the role of the Parole Board. The question was also raised as to whether there was data to support an implicit assumption that parolees were recidivists or that the proposed changes were likely to reduce the incidence of crime. Some groups asserted that the proposed amendments were likely to increase the numbers of prisoners incarcerated and thereby burden an already over-stretched prison system, retard the rehabilitation of inmates, and increase the period of incarceration for those wrongly convicted.

The Opposition Members of your Committee argued strongly that a way should be found to repose some confidence in the Judge and to communicate to them the society's desire to have harsher penalties in appropriate cases. One Opposition member suggested that both the seven (7) year period in the current Act and the ten (10) year period that was proposed should be discarded and replaced with one period of sentencing, such that a person sentenced to prison should spend at least seventy-five (75) percent of the time before an application could be made for parole.

The Solicitor General cautioned your Committee that it appeared to be arguing in a context that contemplated that in making a decision on the minimum sentence or the death penalty,

the Judge was the final arbiter and an individual would be left without remedy. He reminded your Committee that the Founding Fathers in drafting the Constitution had provided for the Mercy Committee and that this should therefore be considered in the deliberations of your Committee. He further stated that if the Mercy Committee felt that a particular sentence was unduly harsh or oppressive, it had the duty, jurisdiction and prerogative to so reduce the rigours or harshness of the sentence. One Opposition member agreed with the statements of the Solicitor General but cautioned that he did not want a situation where the Bill was passed and challenged by individuals or groups.

The Director of Public Prosecutions sought to assure your Committee that her Office would ensure a prosecutorial procedure in the interest of justice. She informed your Committee that she would be establishing a protocol with the Police and that the determination of the DPP in which to prosecute a matter would be based on the merits of each particular case and the relevant law. One Opposition member asked if she would be prepared to commit her assurance to writing which she stated she would be willing to do. She reminded your Committee that the prosecutors in her department were duty bound to take a global view of the interest of justice which embraced both the rights of the accused as well as the rights of the witnesses.

**Your Committee failed to reach consensus on Clause 2 and recommends that Parliament consider all suggestions made on this Clause.**

### 3.4 An Act to Amend the Bail Act

#### Clause 1

This Clause deals with the short title and construction of the Bill.

**Your Committee recommends this Clause.**

## Clause 2

This Clause seeks to make amendments to Section 3 of the Principal Act. The proposed amendments provide that in relation to certain offences the onus is placed on the defendant to satisfy the Court that bail should be granted. The Bill amends section 3 of the Act by inserting a new subsection (4A) which reads:

**“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.”**

The Second Schedule referred to in this new subsection is itself a new provision which lists the categories of offences to which the special bail provision of Clause 2 would apply. These include murder, perverting the course of justice, as well as certain offences under several Acts including the Treason Felony Act, the Malicious Injuries to Property Act, the Firearms Act, the Offences Against the Person Act, the Dangerous Drugs Act, the Trafficking in Persons Act, and the Child Care and Protection Act.

Several groups and individuals who made presentations to your Committee raised concerns about this provision. They argued that reversing the onus presently on the Prosecution to show why the Defendant is unsuitable for bail and placing it instead on the Defendant to show why bail should be granted, would offend the principle of presumption of innocence and place an onerous burden on the Defendant.

One Opposition member suggested that criteria should be established in the legislation for the Judge to consider in determining whether or not he is satisfied by the Defendant that bail should be granted. He cited a judgment handed down by Justice Sykes in Phillip Stevens vs the DPP (**Claim No. HCV05020 of 2006**) adopting the criteria which have emerged from the jurisprudence of the European Court of Justice. However, the Chairman of your Committee reminded members that criteria were already set out in the Principal Act and that this clause was simply shifting the burden from the Prosecution to show that bail should not be granted and placing it on the Defendant to advocate for bail.

Your Committee recommends that the reported suggestion be considered.

Clause 3

Clause 3 of the Bill proposes to amend section 10 of the Principal Act. Section 10 provides for a Defendant's right of appeal where the Court has refused to grant bail. The proposed amendment is a new provision which imparts to the Prosecution a general right of appeal where the Defendant has been granted bail and sets out the manner in which that appeal should be pursued. The previous section would be renumbered subsection (1) and new provisions subsections (2) to (6) would be added. The new subsections would read—

- “(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 proceeding 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)."**

These proposed amendments generated vibrant discussions in your Committee. One group, Jamaicans for Justice, had no policy objection to a general right of appeal being granted to the Prosecution in bail matters. However, they highlighted their concern that such a general right of appeal has the potential to cause serious administrative burdens on the legal system and put the Defendant to greater expense where their attorneys must respond to such appeals. They were also concerned that the hearing of the appeal could potentially last for an indefinite time notwithstanding that it had commenced within seventy-two hours of giving oral notice; and that in such cases the Defendant's liberty would be curtailed indefinitely. One Opposition Member supported this view and suggested that the amendment be revised to provide for the conclusion of the appeal hearing within a specified time and also that consequences be set out in instances where the hearing did not take place.

The Solicitor General counselled the Committee that the proposed amendment sufficiently addressed the concern raised by the Opposition member. Particularly, he advised that if the appeal did not commence within seventy-two hours, the Defendant would be given bail. He added that at that point there would be no statutory basis on which to hold the Defendant and therefore the Defendant would have an action for false imprisonment if he were held beyond the seventy-two (72) hours. The Opposition member opined that the amendments as drafted did not clearly support the Solicitor General's comments and suggested that the amendment be revised to state clearly the consequences that would arise where the time period for the commencement of the appeal hearing was not met. Both men agreed that the right to liberty should not be left in a scenario which may be unclear.

Your Committee held a lengthy discussion on subsections (5) and (6) of this proposed amendment and finally decided that the words "**or such longer period as the Court may grant**" should be added after the words "**shall be commenced within seventy-two (72) hours**" in the proposed section 10(6).

**Your Committee recommends this suggestion.**

Your Committee also discussed at length the practicality of requiring the Director of Public Prosecutions to give oral notice of the appeal of bail. The point was made that in some instances depending on where the matter was being heard, the DPP is not present and it is the Clerk of Court that prosecutes the matter. Consequently, the time given for providing notice may run out before the DPP is ever aware of the need to give notice of appeal of grant of bail. After much deliberation, the Committee Chairman suggested that an amendment be done to Clause 3(3)(a) to indicate that either the DPP or the Clerk of Court could give the requisite oral notice. The Chief Parliamentary Counsel suggested that reference could be made to the "Prosecution" so that the Prosecution could give oral notice.

**Your Committee recommends this suggestion.**

Your Committee was assured by the Office of the Director of Public Prosecutions that in the interest of ensuring the Appellant's access to his constitutional right to liberty as soon as possible her Office would ensure that their obligations were fulfilled by the end of twenty-four hours. She informed your Committee that she intended to have her Officers use a standard form to monitor all their cases so that they would have a good idea of those issues that they would appeal. However, she was concerned that the hearing date of the appeal was the purview of the Registry of the Court of Appeal and therefore neither the Prosecution nor Defense would have control over whether the seventy-two (72) hour deadline was met. The DPP then suggested that some provision be made such that the Registry of the Court was also compelled to deal with the Appeal within the proposed prescribed time. Your Committee Chair supported this point.

**Your Committee recommends that such a provision be made.**

#### Clause 4

This Clause amends Section 17 of the Principal Act to reflect the fact that an additional Schedule is being inserted at the end of the Act.

**Your Committee recommends this provision.**

## Clause 5

This Clause amends the Act by inserting a Second Schedule comprising a list of offences under several different Acts to which the special provision for the grant of bail will apply. One Opposition member of your Committee queried the criteria that were used to develop the list of offences that were set out in the Second Schedule. He suggested that the focus of the offences in the Second Schedule should be those that involved guns, other gun related offences and murder. Your Committee Chair explained that some of the offences were included based on those crimes that were related to the guns for drugs trade.

**Your Committee recommends that Parliament consider this suggestion.**

### **3.5 An Act to Make Interim Provision in Relation to the Grant of Bail in Specified Circumstances**

#### Clause 1

This Clause cites the short title of the Bill.

**Your Committee recommends this Clause.**

#### Clause 2

This Clause sets out the duration of the period of enforcement of the provisions of this Bill as one year.

**Your Committee recommends this Clause.**

### Clause 3

This Clause proposes that for as long as the provisions are in effect, the Bail Act should be read to include the insertion of a new section 3A. This proposed new section would focus on bail in relation to serious offences. The proposed section would read as follows: --

- “3A.— (1) A person who is charged with—**
- (a) any offence specified in paragraphs 1 to 6 of the Second Schedule;**
  - or**
  - (b) any offence specified in paragraphs 7 to 11 of the Second Schedule**
- and has on a previous occasion been convicted of an offence specified in the Second Schedule,**

**shall be entitled to be granted bail only if a period of sixty days, commencing on the date on which the person is first charged with that offence, has elapsed and the person satisfies the Court that bail should be granted.**

**(2) A person who is charged with any offence specified in paragraphs 7 to 11 of the Second Schedule and who has not, on a previous occasion, been convicted of any offence specified in the Second Schedule, shall be entitled to be granted bail only if that person satisfies the Court that bail should be granted.**

**(3) In any case falling within subsection (1), upon the expiration of the sixty day period mentioned in that subsection, the procedure set out in section 22 shall apply in respect of that person.”**

This Clause drew many comments from stakeholders who presented to your Committee and lengthy discussions were held on the proposed amendments. Arguments were made that the removal of the eligibility for bail for a period of sixty days was unconstitutional. Some made the point that to do so was inconsistent with the individual's right to liberty under sections 13 and 15 of the Constitution. Further arguments were put forward that in so altering the

Constitution, the provisions would attract the restrictions laid out in Section 49 of the Constitution and therefore could not be enacted in the manner contemplated hereunder.

Several asserted that the interim provisions were punitive and incompatible with the Prosecution's burden of proof and the principle of presumption of innocence. Attorneys who made presentations to the Committee revealed that their experiences indicated that Judges uniformly deny bail for serious crimes and therefore there was no need to interfere with judicial discretion in the granting of bail. Others made the point that in removing the possibility of bail for sixty days, the interim provisions did not allow for consideration of social, economic and other factors.

During the deliberations, your Committee learnt that the proposal of a sixty day period arose out of the Vale Royal Talks between the Government and the Opposition. Your Committee Chairman advised members that a similar provision was also found in similar legislation from Trinidad and Tobago. However, one Opposition member argued against the mandatory removal of bail for sixty days with no provision for extenuating circumstances and asserted that it would be administratively impossible since more burden would be placed on the already over-extended lock-up system. He suggested that there should be established guidelines issued by the Chief Justice to the Judges and Magistrates which would set out clearly the policies of the Ministry of National Security in respect of bail. He further suggested that where such guidelines were not followed there should be an internal review mechanism to ensure uniformity in the approach to bail matters.

Another Opposition member suggested that the legislation should aim to ensure that those against whom there was no evidence as well as those who were reasonably entitled to bail, even in light of some evidence against them, were taken to Court in a short period of time to deal with the question of bail. He further suggested that if bail was denied at that time then it should not be considered again before the end of a sixty day period.

One of the Opposition members expressed some confusion about the procedure that would follow after the expiration of the sixty (60) day period as set out by the proposed Clause 3 subsection (3) in relation to Section 22 of the Principal Act. He pointed out that the

provisions proposed dealt with persons who had been charged while Section 22 deals with persons who have been arrested or detained but not charged. The Chief Parliamentary Counsel sought to assist by suggesting that the words “with such modification as may be appropriate or as may be necessary” be inserted after the words “section 22”.

**Your Committee recommends that Parliament consider this suggestion.**

**3.6 An Act to Make Interim Provision Extending the Powers of Arrest and Detention under Sections 50B and 50F of the Constabulary Force Act**

**Clause 1**

This Clause cites the short title of the Bill.

**Your Committee recommends this Clause.**

**Clause 2**

This Clause sets out the duration of the period of enforcement of the provisions of this Bill as one year.

**Your Committee recommends this Clause.**

**Clause 3**

This Clause sets out interim provisions in respect of Sections 50B and 50F of the Constabulary Force Act for the extension of the powers of arrest and detention. Section 50B in particular, sets out special powers of the Commissioner of Police to establish cordons and impose curfews where it is necessary to do so for the prevention or detection of crime. Section 50F provides for the arrest or detention of persons within a particular locality, for up to twenty-four (24) hours where the locality is subject to the establishment of a cordon or

curfew by the Security Forces under Section 50B. The interim provisions set out in Clause 3 further provide for:

- (1) the arrest or detention of persons *outside* of the locality who may be involved in the commission of a criminal offence within the locality;
- (2) the extension of the twenty-four (24) hour period that a person can be remanded in custody up to seventy-two (72) hours.

The interim provisions were borne out of the view that it was desirable for the protection of the rights of others and in the public interest to introduce more stringent conditions regarding the arrest and detention of persons under the existing special powers given by Sections 50B and 50F of the Constabulary Force Act. The new provisions therefore build on the existing special powers already provided by Part IIA of the Act. For example, the powers contemplated under Sections 50B and 50F are extended to a Divisional Commander under the new interim provisions as well as to a member of the Force, not below the rank of Assistant Commissioner as currently exists in the Principal Act. The provisions also outline the criteria that a Justice of the Peace must consider in determining whether there are reasonable grounds for the arrest of a person outside of the locality, in relation to a crime that is, has been or is about to be committed *within* the locality.

Some of the presenters before your Committee felt that the provisions were imparting to police officers the responsibility of making judicial decisions for which they were not trained and could not be held accountable for on appeal. The concern regarding training was also expressed in relation to Justices of the Peace who would be tasked with making determinations as to the reasonable grounds for arrest or detention under the particular conditions. There were also concerns that the type of criminal offence that would subject a person to arrest and detention under the specified conditions were not elucidated and therefore a person could be arrested or detained under the proposed conditions for offences such as "smoking a spliff" or "not having car papers".

Several expressed concern that the extension of the power to arrest and detain persons *outside* of the locality subject to the cordon or curfew was not qualified by any distance and suggested that such power should extend only as far as a mile outside of the locality. Further assertions

were also made that the provisions served generally to limit habeas corpus rights and increase the potential for arbitrariness and abuse of power. Concerns were also raised about the indicators that would measure the effectiveness of the proposed legislation.

#### **4. CONCLUSION**

Your Committee is genuinely concerned about the level of crime plaguing the country and instilling fear in the entire population. While some members were concerned about the restrictions set out in these Bills, other members highlighted the plight of those who have suffered at the hands of perpetrators of crime. All members share the view that there is a need to promulgate legislation that will stem the scourge of crime. Indeed, some of your Committee members continuously pointed out the importance of ensuring that as much as possible legislation crafted should be able to withstand any challenge in a Court of law. Your Committee therefore requests that the Parliament give consideration to all suggestions that would improve these Bills.

#### **5. ACKNOWLEDGEMENTS**

Your Committee wishes to express sincere gratitude to all those individuals and organizations that made written submissions and oral presentations or participated in the deliberation process. A special recognition to the staff of the following entities: the Office of the Parliamentary Counsel, the Attorney General's Chambers, the Legal Reform Department, the Office of the Director of Public Prosecutions, the Office of the Solicitor General, the Ministry of Justice and the Ministry of National Security for the technical guidance given to the Committee throughout its deliberations.

Your Committee is also grateful to the Press, who ably covered the meetings and reported the proceedings to the public. To the Clerk to the Houses and her staff, a special thank you for the invaluable assistance and kind courtesies extended during the meetings.

**Houses of Parliament**

**December 2008**



APPENDIX I  
ATTENDANCE RECORD

6 MEETINGS

	Present	Absent	Apology
Sen. Dorothy Lightbourne -- Chairman	6	-	-
Hon. Pearnel Charles, M.P.	6	-	-
Hon. Laurence Broderick, M.P.	6	-	-
Hon. Daryl Vaz, M.P.	6	-	-
Dr. St. Aubyn Bartlett, M.P.	6	-	-
Dr. Peter Phillips, M.P.	1	5	
Mr. Fitz Jackson, M.P. **	0	6	0
Mrs. Sharon Hay-Webster, M.P. **	2	0	0
Mr. Robert Pickersgill, M.P. ***	1	3	0
Rev. Ronald Thwaites, M.P. ***	1	3	1
Sen. the Hon. Colonel MacMillan	6	-	-
Sen. the Hon. Arthur Williams	6	-	-
Sen. Tom Tavares-Finson	5	1	0
Sen. Arnold J. Nicholson	6	0	0
Sen. Keith D. Knight	6	0	0
Sen. Mark Golding	6	0	0

\*\* Possible number of meetings Member could attend = 2

\*\*\* Possible number of meetings Member could attend = 4

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*

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.

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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.

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.



A BILL

ENTITLED

AN ACT Further to Amend the Firearms 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 Firearms (Amendment) (No. 2) Act, 2008, and shall be read and construed as one with the Firearms Act (hereinafter referred to as the principal Act) and all amendments thereto.

Short title and construction.

2. Section 4 of the principal Act is amended in paragraphs (a)(ii), (b)(ii), and (c)(ii), of subsection (2) by inserting immediately after the word "life", in each case, the words "or such other term, being not less than fifteen years, as the Court considers appropriate".

Amendment of section 4 of principal Act.

Amendment  
of section 9  
of principal  
Act.

3. Section 9 of the principal Act is amended in paragraphs (a)(ii) and (b)(ii) of subsection (2) by inserting immediately after the word "life", in each case, the words "or such other term, being not less than fifteen years, as the Court considers appropriate".

Amendment  
of section 10  
of principal  
Act.

4. Section 10 of the principal Act is amended in paragraph (a)(ii) of subsection (7) by inserting immediately after the word "life" the words "or such other term, being not less than fifteen years, as the Court considers appropriate".

Amendment  
of section 20  
of principal  
Act.

5. Section 20 of the principal Act is amended in paragraphs (a)(ii), (b)(ii) and (c)(ii) of subsection (4) by inserting immediately after the word "life", in each case, the words "or such other term, being not less than fifteen years, as the Court considers appropriate".

Amendment  
of section 24  
of principal  
Act.

6. Section 24 of the principal Act is amended in paragraph (b) by inserting immediately after the word "life" the words "or such other term being not less than fifteen years, as the Court considers appropriate".

Amendment  
of section 25  
of principal  
Act.

7. Section 25 of the principal Act is amended in subsection (3)(b) by inserting immediately after the word "life" the words "or such other term, being not less than fifteen years, as the Court considers appropriate".

## MEMORANDUM OF OBJECTS AND REASONS

A decision has been taken to amend the Firearms Act in order to provide for a minimum sentence of fifteen years for a person convicted before the Circuit Court of any of the following offences—

- (a) contravention of restriction on importation, exportation and transshipment of firearms and ammunition (section 4(2)(a)(ii), (b)(ii) and (c)(ii));
- (b) contravention of restriction on manufacture and dealing in prohibited firearms and ammunition (section 10(7)(a)(ii));
- (c) contravention of restrictions upon purchase, acquisition, sale or transfer of a prohibited weapon on conviction before a Circuit Court (section 10(7)(a)(ii));
- (d) possession of firearms and ammunition (section 20(4)(a)(ii), (b)(ii) and (c)(ii));
- (e) possession of firearm or ammunition with intent to injure (section 24); and
- (f) use and possession of firearm or imitation firearm in certain specified circumstances (section 25).

This Bill seeks to give effect to that decision, which is intended to emphasize the serious nature of those offences, and is a companion to other proposed legislation aimed at reducing crime.

TREVOR MACMILLAN  
Minister of National Security.

A BILL

ENTITLED

AN ACT to Make interim provision in relation  
to the grant of bail in specified  
circumstances.

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As introduced by the Honourable Minister of Justice.

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(GOVERNMENT PRINTERS), DUKE STREET, KINGSTON, JAMAICA.

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SECTION 4 OF THE PRINCIPAL ACT WHICH  
IT IS PROPOSED TO AMEND

4.—(1) A person shall not import into, export from or tranship in Jamaica any firearm or ammunition except under and in accordance with the terms of a Firearm Import Permit, Firearm Export Permit or Firearm Transshipment Permit, as the case may be.

(2) Every person who contravenes subsection (1) shall be guilty of an offence and shall be liable—

- (a) in the case of an offence relating to a prohibited weapon—
  - (i) on summary conviction before a Resident Magistrate to imprisonment with or without hard labour for a term not exceeding two years;
  - (ii) on conviction before a Circuit Court to imprisonment for life with or without hard labour;
- (b) in the case of an offence relating to a restricted weapon or to restricted ammunition—
  - (i) on summary conviction before a Resident Magistrate to a fine not exceeding one thousand dollars or to imprisonment with or without hard labour for a term not exceeding two years; or
  - (ii) on conviction before a Circuit Court to imprisonment for life with or without hard labour;
- (c) in any other case—
  - (i) on summary conviction before a Resident Magistrate to a fine not exceeding four hundred dollars or to imprisonment with or without hard labour for a term not exceeding twelve months; or
  - (ii) on conviction before a Circuit Court to imprisonment for life with or without hard labour.

SECTION 9 OF THE PRINCIPAL ACT WHICH  
IT IS PROPOSED TO AMEND

9.—(1) A person shall not manufacture or deal in—

- (a) firearms or ammunition except under and in accordance with the terms of a Firearm Manufacturer's Licence or a Firearm Dealer's Licence; or

(b) any prohibited weapon.

(2) Every person who contravenes subsection (1) shall be guilty of an offence and shall be liable in the case of—

(a) an offence in relation to the manufacture of, or to dealing in, prohibited weapons—

(i) on summary conviction before a Resident Magistrate to imprisonment with or without hard labour for a term not exceeding five years; or

(ii) on conviction before a Circuit Court to imprisonment for life with or without hard labour; or

(b) an offence in relation to the manufacture of any firearm (other than a prohibited weapon) or ammunition or to dealing in restricted weapons or restricted ammunition—

(i) on summary conviction before a Resident Magistrate to a fine not exceeding two thousand dollars or to imprisonment with or without hard labour for a term not exceeding five years; or

(ii) on conviction before a Circuit Court to imprisonment for life with or without hard labour;

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

10.— (1) A person shall not purchase, acquire, sell or transfer any prohibited weapon.

... ..

(7) Every person who contravenes this section shall be guilty of an offence, and shall be liable—

(a) in the case of the purchase, acquisition, sale or transfer of a prohibited weapon—

(i) on summary conviction before a Resident Magistrate to imprisonment with or without hard labour for a term not exceeding five years; or

(ii) on conviction before a Circuit Court to imprisonment for life with or without hard labour;

... ..

property shall, whether any injury to person or property has been caused or not, be guilty of felony and shall be liable on conviction on indictment—

- (a) before a Resident Magistrate to a fine not exceeding one thousand dollars or to imprisonment with or without hard labour for a term not exceeding five years; or
- (b) before a Circuit Court to imprisonment for life with or without hard labour.

SECTION 25 OF THE PRINCIPAL ACT WHICH  
IT IS PROPOSED TO AMEND

25.—(1) Every person who makes or attempts to make any use whatever of a firearm or imitation firearm with intent to commit or to aid the commission of a felony or to resist or prevent the lawful apprehension or detention of himself or some other person, shall be guilty of an offence against this subsection.

...

...

...

(3) Any person guilty of an offence against subsection (1) or (2) shall be liable on conviction on indictment—

- (a) before a Resident Magistrate to a fine not exceeding one thousand dollars or to imprisonment with or without hard labour for a term not exceeding five years; or
- (b) before a Circuit Court to imprisonment for life with or without hard labour,

and where any person commits an offence against subsection (1) in respect of the commission of a felony or the lawful apprehension or detention of himself for any other offence committed by him, he shall be liable to the penalty provided by this subsection in addition to any penalty to which he may be sentenced for that felony or other offence.

A BILL

ENTITLED

AN ACT to Amend the Offences Against the Person 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 Offences Against the Person (Amendment) Act, 2008, and shall be read and construed as one with the Offences Against the Person Act (hereinafter referred to as the principal Act) and all amendments thereto.

Short title and construction.

2. Section 20 of the principal Act is amended by—

Amendment of section 20 of principal Act.

(a) deleting the word “Whosoever” and substituting therefor the words “Subject to subsection (2), whosoever”;

(b) renumbering the section as subsection (1) of section 20; and



## MEMORANDUM OF OBJECTS AND REASONS

A decision has been taken to amend the Offences Against the Person Act in order to provide for a minimum custodial sentence of fifteen years for a person convicted before the Circuit Court of any of the following offences under section 20 of the Act, namely—

- (a) shooting with intent to do grievous bodily harm or with intent to resist or prevent the lawful apprehension or detainer of any person; and
- (b) wounding with intent, with use of a firearm.

This Bill seeks to give effect to that decision and is intended to emphasize the serious nature of those offences 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 Make interim provision extending  
the powers of arrest and detention under  
sections 50B and 50F of the Constabulary  
Force Act.

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As introduced by the Honourable Minister of National  
Security.

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SECTION 20 OF THE PRINCIPAL ACT WHICH  
IT IS PROPOSED TO AMEND

20. Whosoever shall unlawfully and maliciously, by any means whatsoever, wound, or cause any grievous bodily harm to any person, or shoot at any person, or, by drawing a trigger, or in any other manner attempt to discharge any kind of loaded arms at any person, with intent in any of the cases aforesaid, to maim, disfigure or disable any person, or to do some other grievous bodily harm to any person, or with intent to resist or prevent the lawful apprehension or detainer of any person, shall be guilty of felony, and, being convicted thereof, shall be liable, to be imprisoned for life with or without hard labour.

A BILL

ENTITLED

AN ACT to Amend the Parole 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 Parole (Amendment) Act, 2008, and shall be read and construed as one with the Parole Act (hereinafter referred to as the principal Act) and all amendments thereto.

Short title  
and con-  
struction.

2. Section 6 of the principal Act is amended—

Amendment  
of section 6  
of principal  
Act.

- (a) in subsection (4), by deleting the words “subsection (5)” and substituting therefor the words “subsections (4A) and (5)”; and

- (b) by inserting next after subsection (4) the following as subsection (4A)—

“ (4A) Subject to subsection (5), an inmate who has been sentenced to imprisonment for life, or for a period of fifteen years or more, for—

- (a) any offence under section 4, 9, 10 (7) (a), 20 (4), 24 or 25 of the Firearms Act; or
- (b) any of the following offences referred to in section 20(2) of the Offences Against the Person Act, namely—
  - (i) shooting with intent to cause grievous bodily harm or with intent to resist or prevent the lawful apprehension or detainer of any person; or
  - (ii) wounding with intent, with use of a firearm,

committed after the coming into operation of this Act, shall be eligible for parole after having served a period of not less than ten years.”

## MEMORANDUM OF OBJECTS AND REASONS

A decision has been taken to amend the Parole Act in order to provide that persons who have been sentenced to imprisonment for life, or for a period of fifteen years or more, for specified firearms offences shall not be eligible for parole until after having served a period of not less than ten years of the sentence.

This Bill seeks to give effect to that decision, which is intended to emphasize the serious nature of those offences, and is a companion to other proposed legislation aimed at reducing crime.

TREVOR MACMILLAN  
Minister of National Security.

A BILL

ENTITLED

AN ACT to Amend the Parole Act.

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As introduced by the Honourable Minister of National  
Security.

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SECTION 6 OF THE PRINCIPAL ACT WHICH  
IT IS PROPOSED TO AMEND

6.—(1) Subject to the provisions of this section, every inmate serving a sentence of more than twelve months shall be eligible for parole after having served a period of one-third of such sentence or twelve months, whichever is the greater.

...

...

...

(4) Subject to subsection (5), an inmate—

(a) who has been sentenced to imprisonment for life; or

(b) in respect of whom—

(i) a sentence of death has been commuted to life imprisonment; and

(ii) no period has been specified pursuant to section 5 A,

shall be eligible for parole after having served a period of not less than seven years.



# A BILL

## ENTITLED

AN ACT to Make interim provision in relation to the grant of bail in specified circumstances.

WHEREAS sections 13 to 26 (inclusive) of the Constitution of Jamaica (hereinafter referred to as the Constitution) set out certain fundamental rights and freedoms of the individual, subject to limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest:

AND WHEREAS it is desirable for the protection of the rights of others or the public interest to introduce more stringent conditions regarding the grant of bail to persons charged with certain serious offences:

AND WHEREAS section 50 of the Constitution provides that an Act of Parliament to which that section applies (namely, one the

Bill for which has been passed by both Houses and at the final vote thereon in each House has been supported by the votes of not less than two-thirds of all the members of that House) shall not be void to the extent of any inconsistency with the provisions of sections 13 to 26 (inclusive) of the Constitution but shall, notwithstanding any inconsistency, prevail over those provisions:

AND WHEREAS it is necessary and expedient that the provisions of this Act have effect notwithstanding any inconsistency with the provisions of sections 13 to 26 (inclusive) of the Constitution:

[ ]

NOW, THEREFORE, BE IT ENACTED by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Representatives of Jamaica in accordance with the provisions of section 50 of the Constitution of Jamaica, and by the authority of the same, as follows:—

Short title. 1. This Act may be cited as the Bail (Interim Provisions for Specified Offences) Act, 2008.

Duration of this Act. 2. This Act shall continue in force for a period of one year from the date of its commencement and shall then expire.

Interim provisions in relation to the grant of bail. 3.—(1) While this Act continues in force, the Bail Act shall be read and construed as if the following were inserted as section 3A of that Act—

- "Bail in relation to serious offences. Second Schedule.
- 3A.—(1) A person who is charged with—
- (a) any offence specified in paragraphs 1 to 6 of the Second Schedule; or
  - (b) any offence specified in paragraphs 7 to 11 of the Second Schedule and has, on a previous occasion been convicted of an offence specified in the Second Schedule,

shall be entitled to be granted bail only if a period of sixty days, commencing on the date on which the person is first charged with that offence, has elapsed and the person satisfies the Court that bail should be granted.

(2) A person who is charged with any offence specified in paragraphs 7 to 11 of the Second Schedule and who has not, on a previous occasion, been ~~charged with~~ <sup>convicted of</sup> any offence specified in the Second Schedule, shall be entitled to be granted bail only if that person satisfies the Court that bail should be granted. Second  
Schedule.

(3) In any case falling within subsection (1), upon the expiration of the sixty day period mentioned in that subsection, the procedure set out in section 22 shall apply in respect of that person."

## MEMORANDUM OF OBJECTS AND REASONS

A decision has been taken to temporarily provide in relation to the Bail Act that—

- (a) a person who is charged with—
- (i) any offence specified in paragraphs 1 to 6 of the Second Schedule to the Act; or
  - (ii) any offence specified in paragraphs 7 to 11 of the Second Schedule to the Act, and has a previous conviction for another offence specified in that Schedule.

shall be entitled to be granted bail only after the expiration of a period of sixty days commencing on the date on which the person is first charged, and only if the person satisfies the Court that bail should be granted: and

- (b) a person charged with an offence specified in <sup>paragraphs 7 - 11 of</sup> the Second Schedule to the Act and not having a previous conviction for any such offence, is entitled to be granted bail only if the person satisfies the Court that bail should be granted.

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

The Bill expires after a period of one year from the date of its commencement.

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

A BILL

ENTITLED

AN ACT to Amend the Offences Against the  
Person Act.

---

As introduced by the Honourable Minister of Justice.

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(GOVERNMENT PRINTERS), DUKE STREET, KINGSTON, JAMAICA.

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A BILL

ENTITLED

AN ACT to Make interim provision extending the powers of arrest and detention under sections 50B and 50F of the Constabulary Force Act.

WHEREAS sections 13 to 26 (inclusive) of the Constitution of Jamaica (hereinafter referred to as the Constitution) set out certain fundamental rights and freedoms of the individual, subject to limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest:

AND WHEREAS it is desirable for the protection of the rights of others or the public interest to introduce more stringent conditions regarding the arrest and detention of persons under the special powers given by Part IIA of the Constabulary Force Act:

AND WHEREAS section 50 of the Constitution provides that an Act of Parliament to which that section applies (namely, one the Bill for which has been passed by both Houses and at the final vote thereon in each House has been supported by the votes of not less than two-thirds of all the members of that House) shall not be void to the extent of any inconsistency with the provisions of sections 13 to 26 (inclusive) of the Constitution but shall, notwithstanding any inconsistency, prevail over those provisions:

AND WHEREAS it is necessary and expedient that the provisions of this Act have effect notwithstanding any inconsistency with the provisions of sections 13 to 26 (inclusive) of the Constitution:

[ ]

NOW, THEREFORE, BE IT ENACTED by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Representatives of Jamaica in accordance with the provisions of section 50 of the Constitution of Jamaica, and by the authority of the same, as follows:—

- Short title. 1. This Act may be cited as the Constabulary Force (Interim Provisions for Arrest and Detention) Act, 2008.
- Duration of this Act. 2. This Act shall continue in force for a period of one year from the date of its commencement and shall then expire.
- Interim provisions in relation to sections 50B and 50F of the Constabulary Force Act. 3.—(1) While this Act continues in force, the provisions specified in subsections (2) and (3) shall have effect in relation to the Constabulary Force Act (hereinafter referred to as the Act).
- (2) Section 50B(4) of the Act shall be read and construed as if the words “, whether within or outside of the particular locality,” were inserted immediately after the word “exercise”.
- (3) The Act shall be read and construed as if the following provision were substituted for section 50F—
- “Arrest and detention. 50F.—(1) Where the Security Forces are carrying out any operations in any particular locality in relation to which action is taken under section

50B, no person shall be arrested or detained under the powers given by this Part unless a Divisional Commander, or a member of the Force not below the rank of Assistant Commissioner, is satisfied that—

- (a) there is reasonable ground for the arrest or detention of such person; or
- (b) in the case of a person who is outside of that locality, there is reasonable ground to suspect that the person is, or has been, or is about to be, involved in the commission of a criminal offence in the locality.

(2) Where any person is arrested or detained pursuant to the powers conferred by section 50B(4), that person shall—

- (a) immediately be told the reason for his arrest or detention;
- (b) forthwith be taken before a Justice of the Peace who shall determine whether or not there is reasonable ground—
  - (i) for the arrest or detention; and
  - (ii) in the case of a person who is arrested or detained outside of the locality in relation to which action is taken under section 50B, there is reasonable ground to suspect that the person is, or has been, or is about to be, involved in the commission of a criminal offence in the locality.

(3) If a Justice of the Peace is satisfied that the arrest or detention of any person is



reasonably required in the interest of justice he may, having regard to such further investigations as may be necessary, order that the person—

- (a) notwithstanding the provisions of section 22 of the Bail Act, be remanded in custody for a period not exceeding seventy-two hours; and
- (b) at the expiration of the period of remand ordered under paragraph (a), be taken before a Resident Magistrate.

(4) Notwithstanding subsection (3)(b), where it is intended to hold an identification parade in respect of the person so arrested or detained, the provisions of section 63A of the Judicature (Resident Magistrates) Act shall apply.

(5) Where a Justice of the Peace makes an order pursuant to subsection (3) in respect of any person so arrested or detained, the person shall be taken to a police station or lock-up without delay, and an entry shall be made in accordance with the Prisons (Lock-ups) Regulations, 1980.

(6) Where a Justice of the Peace is not satisfied that the arrest or detention of any person is reasonably required in the interest of justice, he shall order that the person be released forthwith.”

## MEMORANDUM OF OBJECTS AND REASONS

Part IIA of the Constabulary Force Act sets out special powers for preventing or detecting crime, including the power of the Commissioner of Police to establish a cordon, and impose a curfew, in any locality where it appears to him that there is reasonable ground to believe that, in the interest of public safety or public order, or for the purpose of detecting crime, it is necessary so to do.

Because of the current level of crime, a decision has been taken to temporarily extend (for a period of one year) the provisions of sections 50B and 50F of the Constabulary Force Act so as to—

- (a) provide for the arrest and detention of a person outside of the locality in which the special cordon and curfew powers are being exercised, if a Divisional Commander or a member of the Force not below the rank of Assistant Commissioner is satisfied that there is reasonable ground for suspecting that the person is, or has been, or is about to be, involved in the commission of a criminal offence in the locality; and
- (b) increase, from twenty-four to seventy-two hours, the period for which a Justice of the Peace may, if satisfied that the detention or arrest of any person is reasonably required in the interest of justice, order that person, notwithstanding the provisions of section 22 of the Bail Act, to be remanded in custody before being released or taken before a Resident Magistrate. This Bill seeks to give effect to that decision and is a companion to other proposed legislation aimed at reducing crime.

The Bill expires after one year from the date of its commencement.

TREVOR MACMILLAN  
Minister of National Security.

A BILL

ENTITLED

AN ACT to Make interim provision extending  
the powers of arrest and detention under  
sections 50B and 50F of the Constabulary  
Force Act.

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As introduced by the Honourable Minister of National  
Security.

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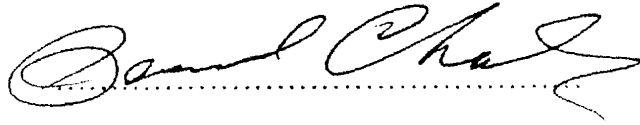
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SIGNATURES OF MEMBERS

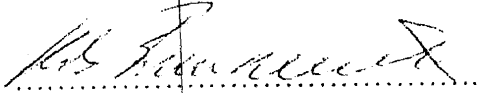
Sen. the Hon. Dorothy Lightbourne



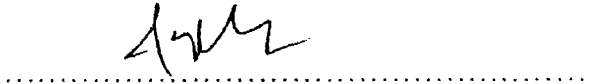
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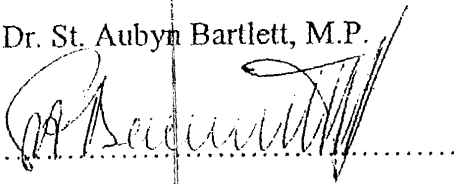
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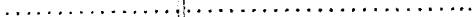
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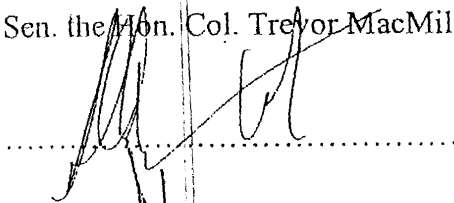
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