



Secretariat Unit

Bill Essentials

The Bail (Amendment) Bill, 2015

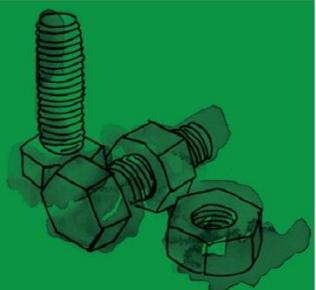
An Act to amend the Bail Act, Chap. 4:60

Bill No: Bill 4 of 2015

Introduced in: The House of Representatives

Introduced on: January 30, 2015

Introduced by: Senator Anand Ramlogan, SC [Former Attorney General]



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Background

The Bail (Amendment) Bill, 2015¹ was introduced and read for a first time in the House of Representatives on Friday 30 January, 2015 by former Attorney General, Senator Anand Ramlogan, SC.

Purpose of the Bill

The Bill seeks to amend the Bail Act to:

1. correct errors in the numbering of certain subsections made during the passage of the Bail (Amendment) Act 2014, Act No. 1 of 2014²; and
2. to prescribe circumstances in which bail shall not be granted to persons.

Legislation mentioned in the Bill

- Bail Act, Chap. 4:60³
- Firearms Act, Chap. 16:01⁴
- Anti-Gang Act, Act No. 10 of 2011⁵

Key Features of Proposed Legislation

- The Bill is inconsistent with sections 4 and 5 of the Constitution and requires a three-fifths majority in the House of Representatives and the Senate.
- The Bill provides for the renumbering of certain subsections to correct inconsistencies in the Bail (Amendment) Act, 2014.
- The Bill seeks to restrict the granting of bail to a person over the age of eighteen charged with an offence under the Anti-Gang Act.
- The Bill also seeks to restrict the granting of bail if a person is charged under section 6 of the Firearms Act and has a charge pending for an offence specified in Part II of the First Schedule. These offences include *inter alia*:
 - possession of imitation firearms in pursuance of any criminal offence;
 - larceny of a motor vehicle;
 - perverting or defeating the course of public justice;
 - arson;
 - Receiving stolen goods; and

¹ <http://www.ttparliament.org/legislations/b2015h04.pdf>

² <http://www.ttparliament.org/legislations/a2014-01.pdf>

³ http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/4.60.pdf

⁴ http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/16.01.pdf

⁵ <http://www.ttparliament.org/legislations/a2011-10.pdf>

- Gang membership
- The Bill seeks to restrict bail if a person is charged with an offence specified in Part II of the First Schedule, section 6 of the Firearms Act, and the prosecution informs the court that the person, or any other person involved in the commission of said offence:
 - used a firearm;
 - had a firearm in his possession during the commission of said offence;
 - had an imitation firearm in his possession during the commission of said offence.
- Clause 5 provides that the Act will cease to have effect on August 15, 2016 (sunset clause).

Table of Amendments

Existing Section	Section as Amended
5(1) Subject to subsections (2) and (4), a Court may grant bail to any person charged with any offence other than an offence listed in Part I of the First Schedule.	
(2) A Court shall not grant bail to a person who is charged with an offence listed in Part II of the First Schedule and has been convicted— (a) on two occasions of any offence arising out of separate transactions; or (b) of any combination of offences arising out of a single transaction, listed in that Part.	
(3) For the purpose of subsection (2), a conviction under the Anti-Gang Act shall be counted.	
(3) In calculating the prior convictions referred to in subsection (2) and (3), the Court shall take into account only convictions recorded within the last fifteen years and time spent serving a sentence shall not be counted in calculating the said fifteen years	(4) In calculating the prior convictions referred to in subsection (2) and (3), the Court shall take into account only convictions recorded within the last fifteen years and time spent serving a sentence shall not be counted in calculating the said fifteen years

<p>(4) Subject to subsections (6) and (7), a Court shall not grant bail to a person who is—</p> <p>(a) over the age of eighteen years; and</p> <p>(b) charged with an offence under the Anti-Gang Act</p>	<p>(5) Subject to subsections (2), (6) and (7), a Court shall not grant bail to a person who-</p> <p>(a) is over the age of eighteen years and charged with an offence under the Anti-Gang Act, 2011; or</p> <p>(b) on or after the commencement of the Bail (Amendment) Act, 2015, is charged with an offence-</p> <p>(i) under section 6 of the Firearms Act, where the person has a pending charge for an offence specified in Part II of the First Schedule; or</p> <p>(ii) specified in Part II of the First Schedule, except an offence under section 6 of the Firearms Act, where the prosecution informs the Court that the person or any other person involved in the commission of the offence used or had in his possession a firearm or imitation firearm during the commission of the offence.</p>
<p>(5) Subject to subsection (7), where a person is charged with an offence mentioned in subsection (5) and brought before the Court but no evidence has been taken within one hundred and twenty days of the reading of the charge, that person is entitled to make an application to a Judge for bail.</p>	<p>(6) Subject to subsection (7), where a person is charged with an offence mentioned in subsection (5) and brought before the Court but no evidence has been taken within one hundred and twenty days of the reading of the charge, that person is entitled to make an application to a Judge for bail.</p>
<p>(6) Where a person—</p> <p>(a) is charged under section 10(1) of the Anti-Gang Act with harbouring a person who is a child; and</p> <p>(b) is the parent or person acting in loco parentis of the child, and is brought before the Court but no evidence has been taken within sixty days of the reading of the charge, that person is entitled to make an application to a Judge for bail.</p>	<p>(7) Where a person—</p> <p>(a) is charged under section 10(1) of the Anti-Gang Act with harbouring a person who is a child; and</p> <p>(b) is the parent or person acting in loco parentis of the child, and is brought before the Court but no evidence has been taken within sixty days of the reading of the charge, that person is entitled to make an application to a Judge for bail</p>

<p>(8) Notwithstanding subsection (2) and subject to subsection (9), a Court shall not grant bail to any person who—</p> <p>(a) was, before, on or after the commencement of the Bail (Amendment) Act, 2014, convicted for an offence listed in Part II of the First Schedule; and</p> <p>(b) is, on or after the commencement of the Bail (Amendment) Act, 2014, charged with an offence listed in Part II of the First Schedule within ten years after the completion of the sentence including the payment of any fine imposed, if any, in respect of the conviction referred to in paragraph (a).</p>	
<p>(9) Where a person is convicted of an offence listed in Part II of the First Schedule on or after the commencement of the Bail (Amendment) Act, 2014, and is charged with an offence listed in Part II of the First Schedule and brought before the Court but no evidence has been taken within one hundred and twenty days of the reading of the charge, that person is entitled to make an application to a Judge for bail.</p>	
<p>(10) Where a person has been granted bail and is subsequently convicted for an offence under Part II of the First Schedule or the Anti-Gang Act, the Court shall reconsider the grant of bail in respect of any pending charge.</p>	
<p>(11) For the purpose of this section, a conviction includes a conviction for a similar or materially similar offence as listed in Part II of the First Schedule which is imposed by a court of competent jurisdiction in any foreign jurisdiction</p>	

(12) For the purpose of this section, except subsection (5), where a person is charged with an offence listed in Part II of the First Schedule and evidence has been taken within one hundred and twenty days of the reading of the charge but the trial is not completed within one year from the date of the reading of the charge, that person is entitled to make an application to a Judge for bail	(12) For the purpose of this section, except subsection (5)(a) , where a person is charged with an offence listed in Part II of the First Schedule and evidence has been taken within one hundred and twenty days of the reading of the charge but the trial is not completed within one year from the date of the reading of the charge, that person is entitled to make an application to a Judge for bail
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Considerations

- All the restrictions on the grant of bail contained in this Act will expire on August 15th, 2016 (sunset clause)⁶.

Comparative Legislation in Other Jurisdictions

Country	Legislation	Remarks
Australia (Queensland)	Bail Act 1980 ⁷	An Act to consolidate and amend the law relating to the release of defendants charged with offences and for incidental and other purposes. Section 16(3)(c) provides that bail will be refused where the defendant is charged with an indictable offence in the course of committing which the defendant is alleged to have used or threatened to use a firearm, offensive weapon or explosive substance.
Australia (New South Wales)	Bail Act 2013 ⁸	The purpose of the Act is to provide a legislative framework for a decision as to whether a person who is accused of an offence or is otherwise required to appear before a court should be detained or released, with or without conditions. Section 16A(1) provides that a bail authority making a bail decision for a show cause offence must refuse bail unless the accused person shows cause why his or her detention is not justified. Section 16B(d) provides for the following show cause offences:

⁶ <http://www.parliament.uk/site-information/glossary/sunset-clause/>

⁷ <https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/B/BailA80.pdf>

⁸ <http://www.legislation.nsw.gov.au/maintop/view/inforce/act+26+2013+cd+0+N>

		<p>(i) a serious indictable offence under Part 3 or 3A of the Crimes Act 1900 or under the Firearms Act 1996 that involves the use of a firearm;</p> <p>(ii) an indictable offence that involves the unlawful possession of a pistol or prohibited firearm in a public place; and</p> <p>(iii) a serious indictable offence under the Firearms Act 1996 that involves acquiring, supplying or manufacturing a pistol or prohibited firearm.</p>
Canada	Criminal Code RSC 1985, c – 46	<p>An Act respecting the Criminal Law</p> <p>Section 515(6)(a)(viii) provides that an accused will be detained in custody if the accused is charged with an indictable offence [...] that is alleged to involve or whose subject-matter is alleged to be a firearm [...], a prohibited weapon, a restricted weapon [...] any ammunition or prohibited ammunition [...].</p>
Jamaica	The Bail Act ⁹	<p>Section 4A provides that Bail shall be granted to a defendant in relation to any offence specified in the Second Schedule, only if the defendant satisfies the Court that bail should be granted. Section 5 of the Second schedule provides for any offence under the following provisions of the Firearms Act:</p> <ul style="list-style-type: none"> (a) section 4 (importation, exportation and transshipment 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); (f) section 25 (use or possession of firearm or imitation firearm in certain circumstances
New Zealand	Bail Act 2000 ¹⁰	<p>Section 10 provides for restrictions on bail where a defendant over 17 years is charged with a specified offence and has 1 or more previous convictions for another specified offence. Section 10(2) provides for the specified offences of using any firearm against a law enforcement officer and the commission of a crime with firearm.</p>

⁹ http://moi.gov.jm/sites/default/files/laws/Bail%20Act_0.pdf

¹⁰ <http://www.legislation.govt.nz/act/public/2000/0038/latest/whole.html#DLM68380>

Reference Material

Articles

- Brown, D., Quilter, J. (2014) Speaking Too Soon: The Sabotage of Bail Reform in New South Wales. *International Journal for Crime, Justice and Social Democracy* 3(3): 73 – 79. doi: 10.5204/ijcjsd.v3i2.181.
<https://www.crimejusticejournal.com/article/view/181/pdf>
- Review of the Bail Act 2013 – John Hatzistergos
https://www.nsw.gov.au/sites/default/files/news/review_of_the_bail_act_2013_-_final_report.pdf

Newspaper References

- Trinidad and Tobago Newsday, February 12th, 2015 – No Bail for Gang Offences Too¹¹
- Trinidad Express Newspaper, January 29, 2015 - No bail for imitation gun accused¹²
- Trinidad Newsday Newspaper, January 16, 2015 - Tighter bail conditions¹³
- Trinidad Newsday Newspaper, January 12, 2015- No bail for gun crimes¹⁴
- Trinidad Express Newspaper, January 12, 2015 - No bail for 120 days for gun crime, says AG¹⁵
- The Age Victoria – Bail case prompts Pakula to order review of laws, January 12th, 2015¹⁶
- Trinidad Express Newspaper, December 22, 2014 - No bail for accused¹⁷
- Trinidad Newsday Newspaper, December 5 2014 -Rajae charged¹⁸
- Trinidad Guardian, November 25th, 2014 – No Bail for trio on Gun, Ammo, Drug Charges¹⁹
- Trinidad Guardian Newspaper, May 28, 2014 - No bail for babysitter on gun charge²⁰

¹¹ <http://www.newsday.co.tt/politics/0,206850.html>

¹² <http://www.trinidadexpress.com/news/No-bail-for-imitation-gun-accused-290184571.html>

¹³ <http://www.newsday.co.tt/editorial/0,205600.html>

¹⁴ <http://www.newsday.co.tt/news/0,205424.html>

¹⁵ <http://www.trinidadexpress.com/news/No-bail-for-120-days--for-gun-crime-says-AG-288218171.html>

¹⁶ <http://www.theage.com.au/victoria/bail-case-prompts-pakula-to-order-review-of-laws-20150112-12mkzx.html>

¹⁷ <http://www.trinidadexpress.com/news/No-bail-for-accused-286628431.html>

¹⁸ <http://www.newsday.co.tt/news/0,203830.html>

¹⁹ <http://www.guardian.co.tt/news/2014-11-25/no-bail-trio-gun-ammo-drug-charges>

²⁰ <http://www.guardian.co.tt/crime-and-court/2014-05-28/no-bail-babysitter-gun-charge>

- Trinidad Express Newspaper, January 24, 2014 - Talking about bail²¹
- Trinidad Express Newspaper, August 28, 2011 - Subhas: Review anti-gang law²²

Other Useful Information

- Bill Essentials – The Bail (Amendment) Bill, 2013
<http://www.ttparliament.org/documents/2215.pdf>
- The Crown Prosecution Service
http://www.cps.gov.uk/legal/a_to_c/bail/
- The Persistent Gang Threat
<http://chamber.org.tt/articles/the-persistent-gang-threat/>



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²¹ <http://www.trinidadexpress.com/commentaries/Talking-about-bail-241908541.html>

²² http://www.trinidadexpress.com/news/Subhas_Review_anti-gang_law-128570158.html