

THE BAIL (AMENDMENT) (NO. 2) BILL, 2005

Explanatory Note

(These notes form no part of the Bill but are intended only to indicate its general purport)

The Bill seeks to amend the Bail Act, 1994 (Act No. 18 of 1994) to make certain violent offences under the Bail Act, 1994 and the offence of kidnapping for ransom under the Kidnapping Act, 2003 (Act No. 21 of 2003) non-bailable offences. The Act would be inconsistent with sections 4 and 5 of the Constitution and is therefore required to be passed by a special majority of three-fifths of the members of each House.

Clause 1 provides for the short title.

Clause 2 provides that the Act shall have effect though inconsistent with the Constitution.

Clause 3 seeks to provide the interpretation provision.

Clause 4 seeks to amend section 5 of the Act by inserting two new subsections after subsection (3). These two new subsections provide that the court would not grant bail where a person is charged with a violent offence listed in Part III of the First Schedule and has been convicted on two prior occasions for any of the violent offences listed therein.

Clause 5 seeks to amend the Act by inserting a new section after section to make the offence of kidnapping for ransom a non-bailable offence. However, where a person is not brought to trial within sixty (60) days of the date of charge that person is entitled to apply to a Judge in Chambers for bail.

Clause 6 seeks to amend the First Schedule to the Act. Part II is repealed and substituted with a new Part II. A new Part III would be inserted to provide a list of violent offences.

Clause 7 provides for this Act to continue in force for one year with a provision for its continuance for a further period by a subsequent Act of Parliament, subject to the special majority requirements prescribed under the Constitution.

BILL

AN ACT to amend the Bail Act, 1994

Preamble

WHEREAS it is enacted by section 13(1) of the Constitution that an Act of Parliament to which that section applies may expressly declare that it shall have effect even though inconsistent with sections 4 and 5 of the Constitution and, if any Act does so declare, it shall have effect accordingly:

And whereas it is provided in section 13(2) of the Constitution that an Act of Parliament to which that section applies is one the Bill for which has been passed by both Houses of Parliament and at the final vote thereon in each House has been supported by the votes of not less than three fifths of all the members of that House:

And whereas it is necessary and expedient that the provisions of this Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution:

Enactment

ENACTED by the Parliament of Trinidad and Tobago as follows:

Short title

1. This Act may be cited as the Bail (Amendment) (No. 2) Act, 2005.

Act inconsistent with Constitution

2. This Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution.

Interpretation Act No. 18 of 1994

3. In this Act, “the Act” means the Bail Act, 1994.

Section 5 amended

4. Section 5 of the Act is amended by inserting after subsection (3) the following new sections –

“(4) A Court shall not grant bail to a person who is charged with an offence listed in Part III of the First Schedule and has been

First Schedule

convicted on two occasions arising out of separate transactions –

- (a) of any offence; or
- (b) of any combination of offences,

listed in that Part.

(5) In calculating the two prior convictions referred to in subsection (4) convictions recorded within the last fifteen years shall be taken into account.”.

**Section 5A
inserted**

5. The Act is amended by inserting after section 5, the following new section -

**“No bail for
kidnapping
for ransom**

**Act No. 21 of
2003**

5A.(1) A Court shall not grant bail to a person charged with the offence of kidnapping for ransom under the Kidnapping Act, 2003.

(2) Notwithstanding subsection (1), where the person charged with the offence of kidnapping for ransom is not brought to trial within sixty days of the charge, that person shall be entitled to make an application to a Judge in Chambers for bail.”.

**First
Schedule
amended**

6. The First Schedule to the Act is amended-

(a) by repealing Part II and substituting the following new Part –

**“PART II
SPECIFIED OFFENCES**

- (a) trafficking in narcotics or possession of narcotics for the purpose of trafficking;
- (b) possession of imitation firearms in pursuance of any criminal offence;
- (c) larceny of a motor vehicle;
- (d) perverting or defeating the course of public justice;

- (e) arson;
- (f) receiving stolen goods.”

(b) by inserting after Part II the following new Part –

“PART III
VIOLENT OFFENCES

- (a) manslaughter;
- (b) possessing and use of firearms or ammunition with intent to injure;
- (c) rape;
- (d) grievous sexual assault;
- (e) sexual intercourse with female under fourteen;
- (f) sexual intercourse with female between fourteen and sixteen;
- (g) sexual intercourse with male under sixteen;
- (h) buggery;
- (i) sexual intercourse with an adopted minor etc.;
- (j) sexual intercourse with a mentally subnormal person;
- (k) incest;
- (l) shooting or wounding with intent to do grievous bodily harm;
- (m) robbery, robbery with aggravation, armed robbery;
- (n) an attempt to commit any offence listed in this Part or in Part I.”.

Duration

7. This Act shall continue in force for a period of one year from the date of commencement and may be continued in force for a further period by an Act of Parliament, subject to the provisions prescribed under the Constitution.

Passed in the House of Representatives this day of , 2005.

Clerk of the House

IT IS HEREBY CERTIFIED that this Act is one the Bill for which has been passed by the House of Representatives and at the final vote thereon in the House has been supported by the votes of not less than three-fifths of all the members of the House, that is to say, by the votes ofmembers of the House.

Clerk of the House

I confirm the above.

Speaker

Passed in the Senate this day of , 2005.

Clerk of the Senate

IT IS HEREBY CERTIFIED that this Act is one the Bill for which has been passed by the Senate and at the final vote thereon in the Senate has been supported by the votes of not less than three-fifths of all the members of the Senate, that is to say, by the votes ofSenators.

Clerk of the Senate

I confirm the above.

President of the Senate