

AS AMENDED IN THE H.O.R.

THE BAIL (AMENDMENT) BILL, 2010

Arrangement of Clauses

Clause

1. Short title
2. Commencement
3. Act inconsistent with Constitution
4. Interpretation
5. Section 3 amended
- 6. Section 5 amended**
7. First Schedule amended
8. Duration
9. Written law amended

No. 14 of 2010

First Session Tenth Parliament Republic of
Trinidad and Tobago

HOUSE OF REPRESENTATIVES

BILL

AN ACT to amend the Bail Act, Chap. 4:60

THE BAIL (AMENDMENT) BILL, 2010

Explanatory Note

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

This Bill seeks to amend the Bail Act, Chap. 4:60, (“the Act”) to confer on a Court the jurisdiction to deny bail to **a person who is charged with an offence under the Anti-Gang Bill, 2010, or a person who is charged with specified offences which involve the use of a firearm.** The Bill will also include all the substantive offences under the Anti-Gang Bill, 2010, as specified offences under Part II of the First Schedule **to the Act.** Finally, the Bill provides that it shall remain in force for five years **from the date of its commencement.**

The Bill, which contains nine clauses, 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 the short title of this Act, for which this is the Bill.

Clause 2 seeks to provide the commencement provision.

Clause 3 provides that this Act shall have effect though inconsistent with sections 4 and 5 of the Constitution.

Clause 4 seeks to provide the interpretation provision.

Clause 5 seeks to amend section 3 of the Act by providing for the definition of the phrases “gang”, “gang member”, and “gang-related activity”, and also to address the issue of proving, among other things, membership in a gang and participation in gang-related activity.

Clause 6 seeks to amend section 5 of the Act by inserting **five** new subsections after subsection (5). **The proposed subsection (6) provides that a Court shall not grant bail to a person who is over the age of eighteen years and is charged with an offence under the Anti-Gang Bill, 2010. The proposed subsection (7) would allow a person who has been charged with an offence under the Anti-Gang Bill, 2010, to apply to a Judge for bail where no evidence has been taken within one hundred and twenty days of the reading of the charge. The proposed subsection (8) would allow a person who is charged with harbouring a child and who is the parent or**

person acting in *loco parentis* of the child to apply for bail where no evidence has been taken within sixty days of the reading of the charge. The proposed subsection (9) provides that a Court shall **not grant** bail to a person who is **charged with specified offences involving the use of a firearm where that person has, in relation to the offences listed in Part II or Part III of the First Schedule, been convicted of at least one such offence within ten years of having served a sentence for one of those offences.** The proposed subsection (10) provides **that a person charged under subsection (9) may apply, if no evidence is taken within one hundred and twenty days, to a Judge for bail.**

Clause 7 seeks to amend the First Schedule of the Act by inserting in Part II, all the substantive offences under the proposed Anti-Gang Bill, 2010, as specified offences.

Clause 8 seeks to provide for the duration of this Act.

Clause 9 seeks to amend the Bail (Amendment) Act, 2008 (Act No. 17 of 2008) to change the duration provision.

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[, 2010]

WHEREAS it is enacted by section 13(1) of the Preamble 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. (1) This Act may be cited as the Bail (Amendment) Act, 2010.
Commencement	2. This Act shall come into operation on a date to be fixed by the President by Proclamation.
Act inconsistent with Constitution	3. This Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution.
Interpretation Chap.4:60	4. In this Act, “the Act” means the Bail Act.
Section 3 amended	5. Section 3 of the Act is amended in subsection (1), by inserting after the definition of the word “Court” the following definitions:
Act No. of 2010	“gang” has the meaning assigned to it in section 4 of the Anti-Gang Act;
	“gang member” has the meaning assigned to it in section 4 of the Anti-Gang Act;
	“gang-related activity” has the meaning assigned to it in section 4 of the Anti-Gang Act;”.

6. Section 5 of the Act is amended by inserting after subsection (5) the following subsections: Section 5 amended

“ (6) Subject to subsections (7) and (8), a Court shall not grant bail to a person who is—

(a) over the age of eighteen years; and

(b) charged with an offence under the Anti-Gang Act.

Act No. of 2010

(7) Subject to subsection (8), where a person is charged with an offence mentioned in subsection (6) 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.

(8) Where a person—

(a) is charged under section 10(1) of the Anti-Gang Act with harbouring a person who is a child; and

(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.

(9) A Court shall not grant bail to a person who is charged with an offence listed in paragraph *(b)*, *(c)* or *(d)* of Part III of the First Schedule if the offence involves the use of a firearm or in paragraph *(e)* of Part III of the First Schedule and who has, in relation to the offences listed in Part II or Part III of the First Schedule, been convicted of at least one such offence within ten years of having served a sentence for one of those offences, whether the conviction was for an offence arising out of separate transactions or a combination of offences arising out of a single transaction.

(10) Notwithstanding subsection **(9)**, where a person is charged with an offence mentioned in subsection **(9)** 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.”.

First Schedule
amended

- 7.** The Act is amended in Part II of the First Schedule—
- (a)* in paragraph *(d)*, by deleting the word “and”;
 - (b)* in paragraph *(e)*, by deleting the full stop and substituting a semi-colon; and
 - (c)* by inserting after paragraph *(e)*, the following paragraphs:
 - “ *(f)* gang membership;
 - (g)* coercing or encouraging gang membership;**
 - (h)* preventing gang member from leaving gang;**

- (i) participaton in criminal activity in association with gang;
- (j) possession of bullet-proof vest, firearm or ammunition for benefit of gang;
- (k) harbouring or concealing gang members;
- (l) recruiting a child to be a gang member;**
- (m) threatening to publish with intent to extort; and**
- (n) demanding money with menaces.”.**

8. This Act shall continue in force for a period of five Duration years from the date of its commencement.

9. Section 7 of the Bail (Amendment) Act, 2008, is Written law amended Act. No. 17 of 2008 repealed and the following section is substituted:

“Duration 7. This Act shall continue in force for a period of five years from the date of commencement of the Bail (Amendment) Act No of 2010 Act, 2010.”.

Passed in the House of Representatives this day
of , 2010.

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
of members of the House.

Clerk of the House

I confirm the above.

Speaker

Passed in the Senate this day of , 2010.

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 of Senators.

Clerk of the Senate

I confirm the above.

President of the Senate

No. 14 of 2010

FIRST SESSION
TENTH PARLIAMENT
REPUBLIC OF
TRINIDAD AND TOBAGO

BILL

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Received and read the

First time

Second time

Third time