

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 EVIDENCE (AMENDMENT) (No. 2) 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 a gang member. The Bill provides that a Court shall not grant bail to a gang member in two categories. First, where he is charged for an offence listed in Part II or Part III of the First Schedule of the Act and has one previous conviction for a similar offence within the last ten years, and secondly, where he has at least two pending charges for offences listed in Part II or Part III of the First Schedule of the Act. The Bill also seeks to give the Court the jurisdiction to deny bail to a person who is charged for certain offences involving a firearm. However, where no evidence is taken in relation to the charge against the person within one hundred and twenty days, bail may be granted at the discretion of the High Court. The Bill will also include all the substantive offences under the proposed Anti-Gang Bill, 2010, as specified offences under Part II of the First Schedule. Finally, the Bill provides that it shall remain in force for five years after it comes into force.

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 four new subsections after subsection (5). The proposed subsection (6) seeks to give the police the power to arrest a person on reasonable

suspicion of having committed an offence listed in Part II or Part III of the First Schedule and to detain that person for up to five days without the right to bail. The proposed subsection (7) provides a means to have the detention reviewed by a senior police officer. The proposed subsection (8) provides that a Court shall deny bail to a person who is a gang member and who is charged with an offence listed in Part II or Part III of the First Schedule and has been convicted for one such offence within the last ten years, or who has at least two pending charges. The proposed subsection (9) provides the person charged 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.
Sections 3 amended	5. Section 3 of the Act is amended— <div style="margin-left: 40px;">(a) in subsection (1) by inserting after the definition of the word “Court” the following definitions: <div style="margin-left: 40px;">“gang” has the meaning assigned to that word in section 4(1) of the Anti-Gang Act, 2010; “gang member” has the meaning assigned to that word in section 4(1) of the Anti- Gang Act, 2010; “gang-related activity” has the meaning assigned to that word in section 4(1) of the Anti-Gang Act, 2010;”;</div> </div>

- (b) by renumbering subsection (2) as subsection (3); and
- (c) by inserting after subsection (1) the following subsection:

“ (2) For the purpose of this Act, it shall not be necessary to show that a particular gang possesses, acknowledges or is known by any common name, insignia, flag, means of recognition, secret signal or code, creed, belief, structure, leadership or command structure, method of operation, criminal enterprise, concentration or speciality, membership, age or other qualification, initiation, rites, geographical or territorial situs, boundary or location, or other unifying mark, manner, protocol or method of expressing or indicating its membership when the gang’s existence can be demonstrated by a preponderance of other admissible evidence, but any evidence reasonably tending to show or demonstrate the existence of or membership in a gang shall be admissible in any action or proceedings brought under this Act.”

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

“(6) Notwithstanding any law to the contrary, a police officer may, without a warrant, detain for a period not exceeding five days a person whom he reasonably suspects of having committed an offence listed in Part II or Part III of the First Schedule without charging him for an offence and such a person is not entitled to be granted bail during that period of detention.

(7) The police officer who made the detention under subsection (6) shall immediately inform the superintendent, or an officer of a higher rank, of the detention and the superintendent or officer shall, within twenty four hours of the detention, review it and decide whether to order the person released or continued in detention.

(8) A Court shall not grant bail to a person who is—

(a) charged with an offence listed in paragraphs (b), (c) or (d) of Part III of the First Schedule if the offence involves the use of a firearm or in paragraphs (e) or (f) of Part III of the First Schedule;

(b) a gang member, who is charged with an offence listed in Part II or 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—

(i) been convicted of at least one such offence within the last ten years, whether the conviction was for an offence arising out of separate transactions or a combination of offences arising out of a single transaction;

(ii) at least two pending charges for such offences, but the offences shall have arisen out of separate transactions, and not from a combination of offences arising out of a single transaction.

(9) Notwithstanding subsection (8), where a person is charged with an offence mentioned in subsection (8), 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.”.

7. The Act is amended in Part II of the First Schedule— First Schedule amended

- (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) participation in criminal activity in association with gang;
 - (h) possession of bullet-proof vest, firearm or ammunition for benefit of gang;
 - (i) harbouring or concealing gang members; and
 - (j) harbouring a child who is a gang member or recruiting a child to be a gang member.”.

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, 2010.”.

Act No of 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 ofmembers 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 ofSenators.

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