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(EXTRAORDINARY)

OF GUYANA

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TUESDAY 15TH NOVEMBER, 2022

THE OFFICIAL GAZETTE 15TH NOVEMBER, 2022
LEGAL SUPPLEMENT — A

GUYANA

ACT No. 21 of 2022

BAIL ACT 2022

I assent.

Mohamed Irfaan Ali,
President.

15th November, 2022

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AN ACT to provide for the grant and refusal of bail in criminal proceedings and for related matters.

A.D. 2022 Enacted by the Parliament of Guyana: –

PART I

PRELIMINARY

Short title and commencement.

1. This Act may be cited as the Bail Act 2022, and shall come into operation on the day the Minister may, by order, appoint.

Interpretation.

2. In this Act-

"bail in criminal proceedings" means bail which may be granted-

(a) in or in connection with proceedings for an offence, to a person charged with or convicted of the offence;

(b) to a person who is under arrest for or in connection with an offence or for whose arrest a warrant endorsed with a direction for bail is issued;

"conviction" includes-

(a) a finding of guilt;
(b) a finding that a person is not guilty by reason of insanity; and
(c) a conviction of an offence for which an order is made placing the defendant on probation or discharging the defendant absolutely or conditionally,

and "convicted" shall be construed accordingly;

"court" means any court in Guyana of competent jurisdiction and includes a magistrate or a judge having powers to act in connection with proceedings before that court;

No. 8 of 2018

"juvenile" has the same meaning as assigned under the Juvenile Justice Act;

"Minister" means the Minister responsible for legal affairs;

"police officer" means a member of the Guyana Police Force not below the rank of Inspector or the officer in charge of the Police Station to which the person arrested is brought;

"serious offence" means any offence for which the maximum penalty is death or imprisonment for a term exceeding five years;

"surrender to custody" means in relation to a person released on bail, that person surrendering into the custody of the court or of a police officer, in accordance with the conditions under which bail was granted;

"vary" in relation to bail, means the imposition of conditions to those imposed upon the grant of bail.

Application of Act.

3. (1) Subject to subsection (2), this Act applies to-

(a) an offence committed in Guyana or elsewhere; and

Cap. 10:04

(b) an extraditable offence under the Fugitive Offenders Act.

(2) This Act shall not apply to-

No. 8 of 2018

(a) the release from custody of a juvenile which is provided for under the Juvenile Justice Act; and

(b) any offence punishable by death.

Police bail.

4. (1) Where a person is taken into custody for an offence without a warrant, a police officer, if it will not be practicable to bring the person before a magistrate within twenty-four hours after the person is taken into custody, shall inquire into the case, and,

(a) if the offence is not one punishable with imprisonment, shall grant the person bail with every convenient speed; and

(b) if the offence is one punishable with imprisonment, may, unless the offence is a serious offence, grant the person bail as soon as practicable.

(2) Bail granted under subsection (1) may be with or without sureties subject to a duty to appear before a magistrate at such time and place as the officer appoints.

(3) Any person who is arrested or detained-

(a) for the purpose of bringing the person before a court in execution of an order of a court; or

(b) upon reasonable suspicion of the person having committed or being about to commit a criminal offence,

and who is not released under subsection (1), shall, in accordance with Article 139 (4) of the Constitution, be brought before a court within seventy-two hours of arrest or detention, but the police may apply to the High Court for extensions of time; and if any person arrested or detained upon reasonable suspicion of his or her having committed or being about to commit a criminal offence is not tried within a reasonable time, then, without prejudice to any further proceedings which may be brought against him or her, he or she shall be released either unconditionally or upon reasonable conditions, including

Cap. 1:01

in particular such conditions as are reasonably necessary to ensure that he or she appears at a later date for trial or for proceedings preliminary to trial.

Hearing of bail applications.

5. Every court shall endeavour to hear and determine any application for bail without undue delay.

PART II

THE RIGHT TO BAIL

Right to bail.

6. (1) Notwithstanding any other law and subject to section 7, every defendant shall be entitled to be released on bail and where bail is granted, the conditions of bail, with or without sureties, shall be reasonable.

(2) Nothing in this Act shall preclude an application for bail on each occasion that a defendant appears before a court in relation to the relevant offence.

Circumstances in which bail may be refused.

7. (1) A court may refuse to release a defendant on bail where-

(a) the court is satisfied that there is substantial ground for believing that the defendant, if released on bail, is likely to-

(i) fail to surrender to custody or to appear before a court as and when required;

(ii) commit an offence while on bail, other than an offence punishable only by a fine; or

(iii) interfere with witnesses, tamper with evidence or otherwise obstruct the course of justice, in relation to the defendant or to any other person;

(b) the court is satisfied that the defendant should be kept in custody-

(i) for the defendant's own protection; or

(ii) for the preservation of public order;

(c) the defendant, having been released on bail, has-

(i) committed an act referred to in paragraph (a); or

(ii) breached any condition imposed on the defendant for the defendant's release;

(d) the defendant is charged or is likely to be charged with a serious offence;

(e) there is substantial ground for believing that the defendant has-

(i) given false or misleading information regarding the defendant's name or address; or

(ii) no fixed place of abode;

(f) the defendant's case is adjourned for inquiries or report and it appears to the court that it would be impracticable to complete the inquiries or make the report without keeping the defendant in custody; or

(g) the court is satisfied that it has not been practicable to obtain sufficient information for the purpose of taking the decisions required by this section for want of time since the institution of proceedings against the defendant.

(2) In considering whether or not to refuse bail on any ground mentioned in subsection (1), the court shall decide the matter by weighing the interests of society against the right of the defendant to his or her personal liberty and the prejudice the defendant is likely to suffer if the defendant is detained in custody, taking into account every consideration which, in its opinion, is relevant, including the following-

(a) the period for which the defendant has already been in custody since the defendant's arrest;

(b) the nature and gravity of the offence with which the defendant is or is likely to be charged and the nature and gravity of the penalty which may be imposed on the defendant;

(c) the character, association, means, social ties and antecedents of the defendant;

(d) whether the defendant has a history of offending while on bail, or breaching court orders, including orders imposing bail conditions;

(e) whether the defendant is likely to interfere with, harm or cause any injury to the victim of the alleged offence or the victim's family;

(f) the possibility of prejudice to the defence in the preparation of a defence due to the unavailability of suitable facilities at the defendant's place of detention for private conference with the defendant's legal representative; or

(g) any other factor which appears to be relevant including the defendant's health profile.

Cap. 11:09

(3) Notwithstanding section 35 of the Domestic Violence Act, when dealing with the case of a defendant charged with an offence under section 32 of that Act, the court's paramount consideration with respect to granting bail shall be the need to protect the victim of the alleged offence.

Cap. 8:03

(4) Notwithstanding sections 81 and 82 of the Sexual Offences Act, when dealing with the case of a defendant charged with an offence under that Act, the court's paramount consideration with respect to granting bail shall be the need to protect the victim of the alleged offence.

Special circumstances.

8. (1) Where under any written law, including this Act, special circumstances or special reasons have to be shown before bail may be granted to a defendant, the court shall only consider those circumstances or reasons which are special to the facts which constitute the offence and not facts that are special to the defendant.

(2) Notwithstanding subsection (1), the court may grant the defendant bail where the defendant needs urgent medical treatment which would be impractical for the defendant to receive in custody.

Bail pending an appeal.

9. (1) A convicted person who has appealed his or her conviction or sentence has no right to be granted bail but may, after filing an appeal against the conviction or sentence, apply to the magistrate before whom the person was convicted, or to the court before which the appeal is pending, for the grant of bail pending the determination of the appeal.

(2) The court hearing the application pursuant to subsection (1), shall not grant bail to the appellant unless that court is satisfied on the balance of probabilities that it would be in the interests of justice in the particular case to do so and the onus is on the appellant to show cause why bail should be granted.

(3) When considering the interests of justice, the court shall take into account the considerations in that regard contained in this Act together with those factors which are relevant to the grant of bail for the particular offence and any other considerations which the court may consider relevant.

Bail hearing may be *in camera*.

10. A court may, having regard to the interests of the defendant or any other person and to the public interest, order that the whole or any part of an application for bail or an appeal against a bail decision be heard *in camera*.

PART III

CONDITIONS OF BAIL

General provisions relating to bail.

11. (1) Where a defendant is granted bail in criminal proceedings, the defendant shall be released on the condition that the defendant shall surrender to custody and attend personally -

(a) at the time and place at which the hearing is adjourned; or

(b) at every time and place to which, during the course of the proceedings, the hearing may from time to time be adjourned.

(2) A court, where necessary, may further require the defendant applying for bail to-

(a) surrender the defendant's passport or travel documents to the court;

(b) inform the court if the defendant intends to leave Guyana;

(c) report to the police at the time and at the place that the court may order; or

(d) comply with any other requirements as appear to the court to be necessary to ensure that the defendant-

(i) appears in court on the date to which the defendant has been remanded;

(ii) does not commit any offence while on bail;

(iii) does not interfere with witnesses or otherwise obstruct the course of justice, whether in relation to the defendant or any other person; and

(iv) is available for the purpose of enabling inquiries or a report or any medical examination, to be made to assist the court in dealing with the defendant for the offence.

Restrictions on conditions of bail.

12. (1) Where a defendant is granted bail, the conditions specified in section 11 (2) shall not be imposed unless it appears to the court that it is necessary to do so-

(a) for the purpose of preventing the occurrence of any of the circumstances mentioned in section 7 (1) (a); or

(b) to enable enquiries or a report to be made into the defendant's physical or mental condition.

(2) Subsection (1) shall apply to any application to the court to vary the conditions of bail or to impose conditions in respect of bail which has been granted unconditionally.

Variation of conditions of bail.

13. (1) Where a court has granted bail in criminal proceedings, the court may make an order varying or revoking any condition of bail or, in respect of bail which it has granted unconditionally, impose conditions where an application is made –

(a) by or on behalf of the defendant to whom it was granted; or

(b) by the prosecutor.

(2) If the proceedings for the offence with which the defendant is charged is transferred to the High Court, any application for an order varying or revoking any condition of bail or substituting or imposing any other condition of bail shall be made to the court to which the proceedings have been transferred.

(3) If the court varies or revokes any condition of bail or substitutes or imposes any other condition of bail under subsection (1), the following provisions apply-

(a) if the defendant is present at the court, the court shall-

(i) as soon as practicable prepare a new notice of bail setting out the conditions of bail as amended, if any;

(ii) be satisfied that the defendant understands the conditions of bail; and

(iii) require the defendant to authenticate the notice of bail;

(b) if the defendant is not present at the court, the court shall send written notice to the defendant requiring the defendant to attend at a specified time and place for the execution of a fresh notice of bail containing the conditions as amended, if any.

(4) The court may issue a warrant for the arrest of the defendant, if the defendant fails without reasonable excuse to attend at the time and place required, or fails to authenticate a fresh notice of bail.

PART IV
BAIL PROCEDURE

Record of decisions as to bail.

14. (1) A court or police officer shall make a written record of the decision relating to bail and shall cause a copy of the written record of the decision as soon as practicable after the record is made, to be given to the defendant.

(2) Subsection (1) applies where-

(a) a court or a police officer grants bail in criminal proceedings;

(b) a court refuses bail in criminal proceedings to a defendant;

(c) a court or a police officer appoints a time or place or a court appoints a different time or place for a defendant granted bail in criminal proceedings to surrender to custody; or

(d) a court varies any condition of bail or imposes conditions in respect of bail in criminal proceedings.

(3) Where bail in criminal proceedings is granted by endorsing a warrant of arrest, the police officer who releases on bail the defendant arrested shall make the record required by subsection (1) instead of the judge or magistrate who issued the warrant.

Court to give reasons for granting or refusing bail.

15. The court shall give reasons in writing for granting or refusing bail or for imposing or varying the conditions of bail and shall give a copy of the court's reasons for the decision to the prosecution, and the defendant in relation to whom the decision is taken as soon as practicable after hearing of the matter.

Defendant to be informed of the right of appeal or review.

16. Where a magistrate's court refuses to grant bail to the defendant, the magistrate's court shall inform the defendant that the defendant may appeal that decision in accordance with section 17 or review that decision in accordance with section 20.

Right of appeal.

17. (1) Where a magistrate's court grants or refuses bail in criminal proceedings or imposes conditions in granting bail in criminal proceedings, the defendant or prosecution, as the case may be, may appeal that decision to the Full Court of the High Court irrespective of whether the criminal charge from which the issue of bail arises is summary or indictable.

(2) Where an appeal is filed pursuant to subsection (1) any party dissatisfied with the decision of the Full Court of the High Court may appeal that decision to the Court of Appeal.

(3) Where an appeal is filed pursuant to subsection (2) any party dissatisfied with the decision of the Court of Appeal may appeal that decision to the Caribbean Court of Justice.

Schedule I

(4) (a) Notice of an appeal from the magistrate's court to the Full Court of the High Court shall be made on the form set out in Schedule I.

Cap. 3:02
Cap. 3:01
Cap. 3:07
No. 2 of 2016

(b) The High Court Act, the Court of Appeal Act, the Caribbean Court of Justice Act together with the Civil Procedure Rules 2016, the Court of Appeal Rules and the Caribbean Court of Justice (Appellate Jurisdiction) Rules 2021 shall apply *mutatis mutandis* in respect of appeals filed pursuant to subsections (2) and (3).

Power of the Full Court of the High Court.

18. (1) Where a magistrate's court grants or refuses bail in criminal proceedings or imposes conditions in granting bail, the Full Court of the High Court may at any time, on an appeal filed by a defendant or the prosecution pursuant to section 17 (1) grant or refuse bail or vary the conditions of bail.

(2) Where the Full Court of the High Court grants bail to a defendant under subsection (1), the Full Court of the High Court may direct the defendant to appear at the time and place which the magistrate's court may have directed.

(3) Where the Full Court of the High Court refuses a defendant bail under subsection (1) and the defendant is not then in custody, the Court shall issue a warrant for the arrest of the defendant and the defendant shall be brought before a magistrate's court and be remanded in custody.

Power of Court of Appeal.

19. (1) Upon hearing the appeal filed pursuant to section 17(2), the Court of Appeal may grant bail to the appellant or deny bail if the Court is satisfied that there are no special circumstances to justify the granting of bail to the appellant.

(2) Where the prosecution appeals a decision of the Full Court of the High Court to grant bail under section 17(2), the Court of Appeal may-

(a) dismiss the appeal and uphold the decision of the Full Court of the High Court;

(b) allow the appeal, revoke the grant of bail and order that the defendant be arrested; or

(c) vary the conditions of the bail.

Right of review.

Cap. 3:06

20. (1) An application shall be made to the High Court in accordance with the Judicial Review Act where the defendant or prosecution wishes to review a decision of a magistrate in respect of the refusal or grant of bail, or the imposition of a condition of bail.

(2) The defendant or prosecution, as the case may be, may appeal any decision of the High Court made under subsection (1) to the Court of Appeal.

(3) The defendant or prosecution, as the case may be, may appeal any decision of the Court of Appeal made under subsection (2) to the Caribbean Court of Justice.

Cap. 3:02
Cap. 3:01
Cap. 3:07
No. 2 of 2016

(4) The High Court Act, the Court of Appeal Act, the Caribbean Court of Justice Act together with the Civil Procedure Rules 2016, the Court of Appeal Rules and the Caribbean Court of Justice (Appellate Jurisdiction)

Rules 2021 shall apply *mutatis mutandis* in respect of applications or appeals filed pursuant to this section.

Power of High Court on hearing an application for review.

21. (1) Upon hearing an application for judicial review filed pursuant to section 20(1), the High Court may grant or refuse bail or vary the conditions of bail.

(2) Where the High Court grants bail to a defendant under subsection (1), the Court may direct the defendant to appear at the time and place which the magistrate's court may have directed.

(3) Where the High Court refuses bail under subsection (1) and the defendant is not then in custody, the Court shall issue a warrant for the arrest of the defendant and the defendant shall be brought before a magistrate's court and be remanded in custody.

Power of Court of Appeal on hearing an appeal to an application for review.

22. (1) Upon hearing an appeal filed pursuant to section 20(2), the Court of Appeal may grant bail to the appellant or deny bail if the Court is satisfied that there are no special circumstances to justify the granting of bail to the appellant.

(2)Where the prosecution appeals a decision of the High Court to grant bail under section 20(2), the Court of Appeal may-

(a) dismiss the appeal and uphold the decision of the High Court;

(b) allow the appeal, revoke the grant of bail and order that the defendant be arrested; or

(c) vary the conditions of the bail.

PART V
MISCELLANEOUS

Offence of absconding by defendant released on bail.

23. (1) A defendant who has been released on bail in criminal proceedings and has failed to surrender to custody commits an offence unless the defendant has reasonable cause for failing to surrender to custody.

(2) A failure to give to a defendant granted bail a copy of the record of the decision shall not constitute a reasonable cause for that defendant's failure to surrender to custody.

(3) In any proceedings for an offence under subsection (1), a document purporting to be a copy of any part of the prescribed record relating to the time and place appointed for the defendant to surrender to custody, and duly certified by the appropriate officer of the court to be a true copy of the portion of the record, shall be evidence of the time and place appointed for that defendant to surrender to custody.

(4) For the purposes of subsection (3) –

(a) "prescribed record" means the record of the decision of the court, or police officer made in pursuance of section 14;

(b) "duly certified" means certified by the –

(i) appropriate officer of the court;

(ii) police officer who took the decision; or

(iii) police officer in charge of the police station from which the person to whom the record relates was released;

(c) "appropriate officer of the court" means –

(i) in the case of a magistrate's court, the clerk of the court or any other officer as may be authorised by a magistrate to act for the purpose; or

(ii) in the case of the Supreme Court of Judicature, the Registrar, the Deputy Registrar, an Assistant Registrar, or any other officer as may be authorised to act for the purpose.

Penalty for absconding.

24. Any person who contravenes section 23 (1) shall be liable on summary conviction to a fine of two hundred thousand dollars and imprisonment for one year.

Liability to arrest for absconding or breaking conditions of bail.

25. (1) If a defendant who has been released on bail in criminal proceedings and is under a duty to surrender into the custody of a court fails to do so at the time appointed, the court may issue a warrant for the defendant's arrest.

(2) Where a defendant released on bail is absent from the court without the leave of the court, at any time after the defendant has surrendered into the custody of the court, a warrant for the defendant's arrest may be issued by the court.

(3) A defendant who has been released on bail in criminal proceedings may be arrested without warrant by a police officer where-

(a) the police officer has reasonable grounds for believing that the defendant is not likely to surrender to custody;

(b) the police officer has reasonable grounds for believing that the defendant has committed or is about to commit another offence while on bail;

(c) the police officer has reasonable grounds for believing that the defendant is likely to break any of the conditions of bail

or has reasonable grounds for suspecting that the defendant has broken any of those conditions; or

(d) in the case where that defendant was released on bail with a surety, the surety notifies the court in writing that the defendant is unlikely to surrender to custody and that for that reason the surety wishes to be relieved of the obligations as a surety.

Bail with surety.

26. (1) In considering the suitability of a proposed surety to be provided for the purpose of ensuring that a person to be granted bail in criminal proceedings will surrender to custody, the court may have regard to-

(d) the surety's financial resources;

(e) the surety's character and any previous convictions the surety has; and

(f) the surety's proximity, whether of kinship, place of residence or otherwise, to the person for whom that person is to be surety.

(2) The court shall require the surety to make a statutory declaration in the form set out in the Schedule II.

Schedule II

Forfeiture of surety or recognisance.

27. Where the defendant failed to surrender to custody as directed under this Act, the court may, in the interest of justice, order the forfeiture of any surety or recognisance lodged to secure the defendant's bail.

Victim to be notified where defendant is released on bail.

28. Where a defendant charged with a serious offence is released on bail, the court shall as soon as practicable inform the victim of that fact, and any conditions of bail.

Abandonment of appeal.

29. Where an appellant abandons his or her appeal and has been released from custody under section 9 and is liable to further imprisonment, or if he or she is otherwise liable to imprisonment, the court shall immediately issue a warrant for his or her apprehension.

Consequential Amendments.

Cap. 16:01

30. (1) The Police Act is amended by repealing section 20.

Cap. 10:02

(2) The Summary Jurisdiction (Procedure) Act is amended by repealing section 71.

Cap. 3:01

(3) The Court of Appeal Act is amended as follows-

(a) in section 17, by deleting subsection (2); and

(b) in section 26(1), by deleting paragraph (e).

Cap. 3:04

(4) The Summary Jurisdiction (Appeals) Act is amended as follows-

(a) in section 12 –

(i) in subsection (1), by deleting the words "under subsection (4)";

(ii) by deleting subsection (4); and

(b) in section 16, by deleting subsection (2).

Regulations.

31. (1) The Minister may make regulations for carrying out the provisions of this Act.

(2) Regulations made under this section shall be subject to affirmative resolution of the National Assembly.

Saving.

32. (1) The provisions of this Act are in addition to, and not in derogation of, any other provisions of any written law relating to bail.

(2) Where there is a conflict relating to the procedure in respect of applications for the grant or refusal of bail and matters consequential thereto, the provisions of this Act shall prevail.

(3) The powers of the High Court under this Act are without prejudice to the jurisdiction vested in the High Court to grant bail under the Constitution or any other law.

(4) Notwithstanding any written law, bail granted before the commencement of this Act is valid.

SCHEDULE I (s.17(4))

(General Heading)

(Court seal)

NOTICE OF APPEAL TO THE FULL COURT OF THE HIGH COURT

THE *(identify party)* APPEALS to the Full Court of the High Court from the (*decision*) of (*name of person or body*) dated (*date*) made at (*magistrate's court and magisterial district*).

THE APPELLANT ASKS that the decision be set aside and a judgment be granted as follows (*or that the decision be varied as follows, or as may be*): (*Set out briefly the relief sought.*)

THE GROUNDS OF APPEAL are as follows: (*Set out briefly the grounds of appeal.*)

(*Date*)

(*Name, address and telephone and fax numbers of appellant's Attorney-at-Law or of appellant*)

Date: _____

_____

Signature of Registry

Issued by: (*name of person at Registry*)

Address of Registry where issued: (*address of Registry*)

TO (*Name and address of respondent's Attorney-at-Law or of respondent*)

SCHEDULE II (s.26 (2))

STATUTORY DECLARATION TO BE MADE BY A SURETY OR SURETIES

CO-OPERATIVE REPUBLIC OF GUYANA

County of .....

I, the undersigned of ..... do solemnly and sincerely declare as follows:

*I/We have agreed to offer *myself/ourselves as surety for ...../defendant in the case State/Police *vs.*.....

In this regard *I/we acknowledge to owe to the State the sum of ..... to be levied on *my/our several movable and immovable property if the said .....fails in the condition of the recognisance to be entered before ..... Magistrate/Justice of the Peace.

(a) that *my/our movable and immovable property including other financial assets consist of the following:

1. (i) Particulars of immovable property—description of immovable property, date of the Deed and name and address of the parties to the Deed .....
2. (ii) Estimated value of immovable property.....
3. (iii) Bank balances—name of the bank, account number and amount .....

And for that purpose *I/we, the undersigned declare—

(b) that the immovable property specified in subparagraph *(a)* (i) above is owned by *me/us free from any encumbrances; or

(iv) Any other movable property and its value .....

*that the immovable property specified in subparagraph *(a)*(i) under mortgage, hypothecated, etc., in consideration of .....

(c) that *I/we have not stood *surety/sureties on the consideration of the aforesaid *immovable/movable property in the *case/cases noted below which *case/cases *has/have been determined;

.....;

(d) that*I/we have not been convicted of any criminal offence. Further a criminal charge is pending against *me/us. /*No criminal charge is pending against *me/us.

Signed .....

.....

Declarant/Declarants

*I/We make this declaration conscientiously believing the same to be true and according to the Statutory Declarations Act, and *I am/we are aware that if there is any statement in this declaration which is false in fact, which *I/we know or believe to be false or do not believe to be true, *I am/we are liable to fine and imprisonment.

Signed ....

Declarant /Declarants

Declared before me this ..... day of .....20 .....

Signed .....

Magistrate, Justice of the Peace, Registrar

*Strike whichever is inapplicable.

Passed by the National Assembly on the 7th November, 2022.

S.E. Isaacs,
Clerk of the National Assembly.

(BILL No. 14/2022)