ANGUILLA

REVISED STATUTES OF ANGUILLA

CHAPTER B2

BAIL ACT

Showing the Law as at 31 December 2022

This Edition was prepared under the authority of the Revised Statutes and Regulations Act, R.S.A. c. R55 by the Attorney General as Law Revision Commissioner.

This Edition revises Act 22/2021, in force 16 September 2021

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Attorney General's Chambers
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BAIL ACT

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SCHEDULE: Bail

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BAIL ACT

Interpretation

1. In this Act—

"bail centre" means any facility declared by the Governor pursuant to section 19 to be a bail centre for the purposes of 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) in connection with an offence, to a person who is under arrest for the offence by warrant or who is otherwise lawfully detained;

"child" means a person under the age of 14 years;

"conviction" includes—

(a) a finding of guilt;

(b) a finding that a person is not guilty by reason of insanity;

(c) a conviction of an offence for which an order is made placing the defendant on probation or discharging him absolutely or conditionally;

and "convicted" shall be construed accordingly;

"Court" includes a Judge or a Magistrate;

"defendant" means a person charged with or convicted of an offence;

"Judge" means a Judge of the High Court or the Court of Appeal;

"Magistrate" means the Magistrate or Senior Magistrate;

"offence" includes an alleged offence;

"police officer" means an arresting officer or an officer or special constable in charge of a police station or lock up;

"surrender to custody" means, in relation to a person released on bail, surrendering himself into the custody of a court or the police at the time and place appointed for him to do so;

"vary" in relation to bail, means imposing further conditions after bail is granted or varying or revoking conditions imposed in relation to the grant of bail;

"young person" means a person who has attained the age of 14 years and is under the age of 17 years.

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(2) References in sections 2(3) and 3(1) and (4) to "imprisonment" do not include a committal—

(a) in default of payment of any sum of money;

(b) for want of sufficient distress to satisfy any sum of money; or

(c) for failure to do or to abstain from doing anything required to be done or left undone.

Entitlement to bail

2. (1) Subject to the provisions of this Act, every person who is charged with an offence shall be entitled to be granted bail by a Court or a police officer, as the case may require.

(2) A person who is charged with an offence shall not be held in custody for longer than seventy-two hours without the question of bail being considered.

(3) Subject to section 3(4), bail shall be granted to a defendant who is charged with an offence which is not punishable with imprisonment.

(4) A person charged with murder may be granted bail only by a Judge.

(5) No person charged with treason shall be granted bail under this Act.

(6) 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.

(7) A police officer above the rank of sergeant may grant station bail in the case of any summary offence.

Circumstances in which bail may be denied

3. (1) Where the offence or one of the offences in relation to which the defendant is charged or convicted is punishable with imprisonment, bail may be denied to that defendant in the following circumstances—

(a) the Court or police officer is satisfied that there are substantial grounds for believing that the defendant, if released on bail would—

(i) fail to surrender to custody,

(ii) commit an offence while on bail, or

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

(b) the defendant is in custody pursuant to the sentence of a Court;

(c) 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 the proceedings against the defendant;

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(d) the defendant, having been released on bail in or in connection with the proceedings for the offence, is arrested pursuant to section 13;

(e) the defendant is charged with an offence alleged to have been committed while he was released on bail;

(f) the defendant's case is adjourned for inquiries or a 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.

(2) In deciding whether or not any of the circumstances specified in subsection (1)(a) exists in relation to any defendant, the Court or police officer shall take into account—

(a) the nature and seriousness of the offence;

(b) the defendant's character, antecedents, association and community ties;

(c) the defendant's record with regard to the fulfilment of his obligations under previous grants of bail;

(d) except in the case of a defendant whose case is adjourned for inquiries or a report, the strength of the evidence of his having committed the offence or having failed to surrender to custody;

(e) whether the defendant is a repeat offender, that is to say, a person who has been convicted on three previous occasions for offences which are punishable with imprisonment; or

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

(3) Bail may be denied to a defendant who is charged with or convicted of an offence punishable with imprisonment if the Court or police officer is satisfied that the defendant should be kept in custody for his own protection or, where he is a child or young person, for his own welfare.

(4) Bail may be denied to a defendant in relation to an offence which is not punishable with imprisonment if—

(a) it appears to the Court that, having been previously granted bail in criminal proceedings, the defendant has failed to surrender to custody in accordance with his obligations under the grant of bail and there are reasonable grounds for believing that, in view of that failure, the defendant, if released on bail, would fail to surrender to custody;

(b) the Court is satisfied that the defendant should be kept in custody for his own protection or, where he is a child or young person, for his own welfare;

(c) the defendant is in custody pursuant to a sentence of a Court; or

(d) having been released on bail in or in connection with the proceedings for the offence, the defendant is arrested pursuant to section 13.

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(5) For the purposes of this section—

(a) references to previous grants of bail in criminal proceedings include a reference to bail granted before the coming into force of this Act;

(b) references to a defendant being kept in custody or being in custody include, where a defendant is a child or young person, being kept in a safe house under the Child Justice Act;

(c) the question whether an offence is punishable with imprisonment shall be determined without regard to any enactment prohibiting or restricting the imprisonment of young offenders or first offenders.

(6) Where the matter referred to in subsection (2)(e) is taken into account in relation to a defendant, the offence to which the bail application relates shall not be tried before the Court which dealt with that application.

Restrictions on conditions of bail

4. (1) Where a defendant is granted bail, the conditions specified in section 5(2) and (3) shall not be imposed unless it appears to the Court, or the police officer, that it is necessary to do so—

(a) for the purpose of preventing the occurrence of any of the events referred to in section 3; or

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

(2) Subsection (1) applies 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.

General provisions relating to bail

5. (1) A person who is granted bail in criminal proceedings shall surrender to custody.

(2) A Court or police officer may, in accordance with the regulations, require any person to whom bail is granted to provide, at the person's option, as a condition for bail before his release—

(a) a surety to secure his surrender to custody; or

(b) a payment of such amount as may be specified.

(3) A person to whom bail is granted may be required—

(a) to surrender his travel documents to the Court;

(b) to inform the Court if he intends to leave Anguilla;

(c) to report at specified times and dates to a police station;

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(d) to comply with such other requirements as appear to the Court to be necessary to ensure that the person—

(i) surrenders to custody,

(ii) does not commit an offence while on bail,

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

(e) to attend at the police station at such times as the Court may specify.

(4) The requirements referred to in subsection (3)(d) may include the imposition of a curfew, in respect of any person to whom bail is granted, between the hours specified by the Court, requiring the person to remain within a specified locality during the hours so specified.

(5) Where a parent or guardian of a young person or child consents to be a surety for the young person or child for the purposes of this section, the parent or guardian may be required to ensure that the young person or child complies with any conditions imposed on him by virtue of subsection (3).

(6) Notwithstanding subsection (5)—

(a) no condition shall be imposed on the parent or guardian of a young person or child where it appears that the young person or child will attain the age of 17 years before the time to be appointed for him to surrender to custody;

(b) the parent or guardian shall not be required to secure compliance with any condition to which the parent's or guardian's consent does not extend; and

(c) the parent or guardian shall not, in respect of those conditions to which the parent or guardian gave consent, be bound in a sum greater than $50,000.

(7) Where a Court has granted bail in criminal proceedings it may on application—

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

(b) by the prosecutor or a police officer;

vary the conditions of bail, or where bail was granted unconditionally, impose conditions.

(8) Where a person has been granted bail in criminal proceedings, bail shall not be revoked unless such revocation is justifiable by virtue of any provision of section 3 or because the defendant otherwise absconds or attempts to abscond.

Record of decision as to bail

6. (1) Subject to subsection (2), where—

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

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(b) 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

(c) a Court varies any condition of bail or imposes conditions in respect of bail in criminal proceedings;

that Court or police officer shall make a record of the decision and, where requested to do so by the defendant, shall cause a copy of the record of the decision to be given to him as soon as practicable after the record is made.

(2) Where bail in criminal proceedings is granted by endorsing a warrant of arrest, the police officer who releases on bail the person 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

7. (1) Where a Magistrate's Court—

(a) refuses bail in criminal proceedings;

(b) imposes conditions in granting bail in criminal proceedings; or

(c) varies any conditions of bail;

the Court shall, in order to enable the defendant to make an application in the matter to a Judge of the High Court, give reasons for refusing bail or for imposing or varying the conditions.

(2) A Court which is required by subsection (1) to give reasons for its decisions shall include a note of those reasons in the record of the decision and shall give a copy of that note to the defendant concerned, or his representative, within 24 hours.

Defendant to be informed of right of appeal

8. Where a Magistrate's Court refuses to grant bail to a defendant who is not represented by counsel, the Court shall inform him of the right of appeal conferred by section 9.

Right of Appeal

9. A defendant to whom section 8 applies may appeal to a Judge of the High Court on notice to the Attorney General.

Powers of Judge in the High Court

10. (1) Where a Magistrate's Court refuses bail in criminal proceedings, or imposes conditions on the grant of bail in criminal proceedings, the Judge in the High Court may grant or refuse bail or vary the conditions.

(2) In granting bail under subsection (1), the Judge in the High Court may direct the defendant to appear at a time and place which the Magistrate's Court could have directed and the recognisance of any surety shall be conditioned accordingly.

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Review of custody cases

11. (1) Where an application for bail has been refused by a police officer, such refusal shall be reviewed by the Magistrate on the defendant's first appearance in Court in relation to the relevant offence.

(2) A Magistrate shall carry out, at least once per week, a review of cases involving defendants who were granted bail but were unable to take up such bail.

(3) Where an application for bail has been refused by the Judge in the High Court, and there has been no subsequent applications for bail by the defendant, the Judge shall carry out a period review of the defendant's case pending trial in the High Court so as to determine whether bail should be granted.

Bail after conviction

12. (1) A person who was granted bail prior to conviction and who appeals against that conviction may apply to the Judge or the Magistrate before whom he was convicted or a Judge of the Court of Appeal, as the case may be, for bail pending the determination of his appeal.

(2) A person whose application is refused by a Magistrate may appeal against such refusal to the Court of Appeal.

Offence of absconding by person released on bail

13. (1) A person who has been released on bail in criminal proceedings and has failed to surrender to custody in accordance with subsection (2) commits an offence unless he has reasonable cause for his failure to surrender to custody.

(2) A person fails to surrender to custody if he fails to surrender himself at the appointed place and appointed time in accordance with bail conditions imposed by the Court or police officer.

(3) It shall be for the defendant to prove that he had reasonable cause for failure to surrender to custody.

(4) A failure to give the person granted bail in criminal proceedings a copy of the record of the decision shall not constitute a reasonable cause for that person's failure to surrender to custody.

(5) In any proceedings for an offence under subsection (1), a document purporting to be a copy of any part of the prescribed record which relates to the time and place appointed for the person specified in the record to surrender to custody and duly certified by the appropriate officer of the Court to be a true copy of that part of the record, shall be evidence of the time and place appointed for that person to surrender to custody.

(6) For the purposes of subsection (5)—

(a) "prescribed record" means the record of the decision of the Court or police officer made pursuant to section 6;

(b) "duly certified" means certified by the appropriate officer of the Court, the police officer who took the decision or the police officer in charge of the police station from which the person to whom the record relates was released; and

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(c) "appropriate officer of the Court" means—

(i) in the case of a Magistrate's Court, the Magistrate,

(ii) in the case of the High Court, the Registrar or Deputy Registrar.

Penalty for absconding

14. A person who commits an offence under section 13(1) is liable on summary conviction before a Magistrate to fine not exceeding $15,000 or to imprisonment for a term of 2 years.

Liability to arrest for absconding or breaching conditions of bail

15. (1) Where a person who has been released on bail in criminal proceedings and is under a duty to surrender to custody fails to surrender to custody at the time appointed for him to do so, the Court may issue a warrant for his arrest.

(2) Where a person who has been released on bail in criminal proceedings absents himself from the Court without the leave of the Court, at any time after he has surrendered to the custody of the Court and before the Court is ready to begin or to resume the hearing of the proceedings, the Court may issue a warrant for his arrest.

(3) A person 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 person is not likely to surrender to custody;

(b) the police officer has reasonable grounds—

(i) for believing that the person is likely to breach any of the conditions of his bail, or

(ii) for suspecting that the person has breached any of those conditions;

(c) in the case where the person was released on bail with a surety, the surety notifies the police officer in writing that—

(i) the person is unlikely to surrender to custody, and

(ii) for that reason, the surety wishes to be relieved of his obligations as a surety.

(4) A person arrested pursuant to subsection (3) shall be brought before a Magistrate as soon as practicable (being not later than twenty-four hours after his arrest or at least the next sitting of the Court).

(5) Where a Magistrate before whom a person is brought under subsection (4) is of the opinion that the person—

(a) is not likely to surrender to custody;

(b) has committed or was about to commit another offence; or

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(c) has breached or is likely to breach any condition of his bail;

the Magistrate may remand him in custody or commit him to custody, as the case may require, or grant him bail subject to the same or different conditions.

(6) Where the Magistrate is not of any opinion referred to in subsection (5), the Magistrate shall grant the person bail subject to the same conditions, if any, as were originally imposed.

Bail with surety

16. (1) This section applies where a person is granted bail in criminal proceedings on the condition that he provide a surety for the purpose of securing his surrender to custody.

(2) In considering the suitability of a proposed surety referred to in subsection (1) regard shall be had to such factors as the Court or police officer think fit, including the surety's—

(a) profession, occupation, trade or business;

(b) character and his previous convictions, if any;

(c) proximity, whether of kinship, place of residence or otherwise, to the person for whom he is to be a surety;

and the surety shall be required to make a declaration in the form set out in the Schedule.

(3) Where a surety is required, a declaration in the form prescribed by Regulations, as to his knowledge of the surety's address and good character, shall be made by—

(a) a Justice of the Peace;

(b) a member of the Royal Anguilla Police Force not below the rank of Sergeant;

(c) a minister of religion; or

(d) a principal of an educational institution other than a pre-primary school.

(4) A Court or police officer shall not refuse a surety unless that surety—

(a) is exempt pursuant to the regulations; or

(b) is, in the opinion of the Court, otherwise unsuitable for the purpose.

(5) Where a Court or police officer grants a person bail in criminal proceedings under subsection (1) but is unable to release the person because no surety or no suitable surety is available—

(a) the Court or police officer shall fix the amount in which the surety is to be bound; and

(b) subsections (6) and (7) apply for purpose of enabling the recognisance of the surety to be entered into subsequently.

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(6) A recognisance of the surety may be entered into before such persons or description of persons as the Court may by order specify, or, if it makes no such order, before any of the following—

(a) where the decision is taken by a Magistrate's Court, before any Magistrate;

(b) where the decision is taken by the High Court or the Court of Appeal, before any Magistrate, the Registrar or where rules of Court provide otherwise, before a person of such other description as is specified in the rules.

(7) Where a surety seeks to enter into his recognisance before any person in accordance with subsection (6) but that person declines to take his recognisance because he is not satisfied as to the surety's suitability, the surety may apply to—

(a) the Court which fixed the amount of the recognisance in which the surety was to be bound; or

(b) a judge of the High Court or Court of Appeal;

for that Court to take his recognisance and that Court shall, if satisfied as to his suitability, take his recognisance.

(8) Where pursuant to subsection (6), a recognisance is entered into otherwise than before the Court that fixed the amount of the recognisance, the recognisance shall have full force and effect as if it had been entered into before that Court.

(9) A person who in any declaration required under this section, makes a statement which he knows to be false in a material particular commits an offence and is liable on summary conviction before a Magistrate to a fine not exceeding $10,000 or to imprisonment for a term of 2 years or to both such fine and imprisonment.

Forfeiture of security or recognisances

17. (1) Where a surety has provided a security for the purpose of securing a person's surrender to custody and that person fails to surrender to custody, the Court may order the forfeiture of the security.

(2) Where a Court orders the forfeiture of security under subsection (1), the Court may declare that the forfeiture extends to such amount less than the full value of the security as it thinks fit to order.

(3) A security which has been ordered to be forfeited under subsection (1) shall—

(a) where it consists of money, be accounted for and paid in the same manner as a fine imposed by that Court;

(b) where it does not consist of money, be enforced by such Magistrate's Court as may be specified in the order.

(4) This section shall have effect in addition to any other provision in any law relating to enforcement of recognisances entered into in criminal proceedings.

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Release of surety or refund of payment

18. (1) A surety shall be released from obligation under the recognisance entered into by him, in the following circumstances—

(a) where the Court grants such release on an application made in accordance with subsection (2);

(b) where the Court makes an order discharging the defendant or a *nolle prosequi* or notice of discontinuance is entered in relation to the defendant for whom the surety was provided;

(c) where the matter in respect of which the surety was provided is adjourned *sine die* or dismissed, as the case may be;

(d) where the defendant concerned is acquitted or convicted, as the case may be.

(2) A surety who wishes to be released from his obligations under a recognisance—

(a) shall apply in writing for such release to the Court by which such recognisance was taken; and

(b) may attend before that Court for the hearing of such application.

(3) Where a surety is released, pursuant to subsection (1)(a) the defendant concerned—

(a) shall forthwith be notified of such release; and

(b) shall be taken into custody until he provides another surety or sureties.

(4) Any amount paid pursuant to section 5(2)(b) shall be refunded in any of the circumstances specified in subsection (1)(a) to (d).

(5) Notwithstanding subsection (4), if a fine is imposed on conviction of the defendant the amount paid pursuant to section 5(2)(b) may, with the surety's consent, be applied towards payment of the fine.

Declaration of facility as bail centre

19. The Governor acting on the advice of the Attorney-General may, by order, declare any facility other than a police station to be a bail centre for the purposes of this Act.

Procedure on arrest or detention

20. (1) Where a person who is arrested or detained is not charged within twenty-four hours after such arrest or detention, he shall be brought forthwith before a Magistrate who shall order that the person be released or make such other order as the Magistrate or the Court thinks fit, having regard to the circumstances.

(2) Notwithstanding subsection (1), where an identification parade is required in relation to that person, the person shall not be brought before a Magistrate but the matter shall be referred to a Magistrate who shall make any such order in the absence of that person.

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False declaration

21. Any person who makes a false declaration under this Act commits an offence and is liable on summary conviction before a Magistrate to a fine not exceeding $10,000 or to imprisonment for a term of 2 years or to both such fine and imprisonment.

Regulations

22. (1) The Governor may make regulations generally for giving effect to the provisions and purposes of this Act.

(2) Regulations made under this section shall be published by Notice in the *Official Gazette*.

Citation

23. This Act may be cited as the Bail Act, Revised Statutes of Anguilla, Chapter B2.

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SCHEDULE

(Section 16)

BAIL

Statutory Declaration to be made by a Surety or Sureties
I the undersigned of ..... do solemnly and sincerely declare a**s** follows: I/*We have agreed to offer myself/*ourselves; a**s** surety for ..... {defendant in the case **R. v** .....}. In this regard I/*we acknowledge to owe to the Crown 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.
(State property and value thereof, relied on in support of sum specified above). ……..…….
I /*We hereby declare that 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 Oaths Act, and I/*we am/ *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/*we am/*are liable to a fine not exceeding $10,000 or to imprisonment not exceeding 2 years or both. ***Signed:*** ..... …..... ***Declarant/Declarants*** Declared before me this ……. day of ..……. 20 …… ***Signed:*** **……** ***Magistrate/Registrar***

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