

TURKS AND CAICOS ISLANDS

THE BAIL BILL 2025

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TURKS AND CAICOS ISLANDS

**A
PROPOSAL
FOR
A
BILL
FOR**

AN ORDINANCE TO CONSOLIDATE THE LAW ON BAIL IN THE ISLANDS, TO RESTATE AND REFORM THE LAW ON BAIL IN THE ISLANDS, TO PROVIDE FOR ELECTRONIC MONITORING CONDITIONS, TO PROVIDE FOR TESTING AND MONITORING OF DEFENDANTS ON BAIL WITH DRUG OR ALCOHOL CONDITIONS AND FOR CONNECTED PURPOSES.

ENACTED by the Legislature of the Turks and Caicos Islands.

**PART I
PRELIMINARY**

Short title and commencement

1. (1) This Ordinance may be cited as The Bail Ordinance 2024 and shall come into operation on such day as the Governor may appoint by Notice published in the *Gazette*.

(2) Different dates may be appointed for different provisions and different purposes.

Interpretation

2. In this Ordinance—

“bail” means bail grantable to a person in or in connection with proceedings for an offence with which the person is charged or of which the person is convicted;

“constable” means any police officer below the rank of corporal;

“defendant” means a person—

(a) who is charged with committing an offence;

(b) committed to stand trial for committing an offence;
or

(c) convicted of committing an offence.

“electronic monitoring address” means the address, specified by a court or Registrar or a Monitoring Officer, for an electronic monitoring condition;

“electronic monitoring condition” means a condition of bail imposed under section 29;

“juvenile” means a person under the age of sixteen years;

“Monitoring Officer” means a person appointed under section 34;

“police bail” means bail granted by a police officer under sections 11 and 17;

“relevant occupant” means—

(a) in relation to an electronic monitoring address that is a family residence, every person of or over the age of sixteen years who ordinarily lives there; or

(b) in relation to any other electronic monitoring address, every person who the Monitoring Officer identifies as being a relevant occupant as may be prescribed.

Purpose

3. The purpose of the Ordinance is to provide the framework within which—

(a) a person's right not to be denied bail without reasonable cause is upheld;

(b) the right to liberty is upheld; and

(c) the presumption of innocence is upheld.

Application

4. This Ordinance shall apply to all persons arrested, charged or convicted with an offence, including persons arrested, charged or convicted with an offence under legislation providing for extradition.

PART II
GENERAL PROVISIONS REGARDING BAIL

Eligibility for bail

5. A defendant is bailable as of right—
- (a) if he is charged with an offence which is not punishable by imprisonment; or
 - (b) if he is charged with a non-violent offence.

Rules for granting bail

6. The following rules shall apply in determining whether bail should be granted—
- (a) a person who is charged with an offence shall not be held in custody without the question of bail being considered for a period not exceeding twenty-four hours; or
 - (b) a person charged with an offence specified in Schedule 1 may only be granted bail if he satisfies the court that bail should be granted.

Circumstances in which bail may be denied

7. (1) In considering whether to deny bail the court shall take into account whether there is just cause to deny bail.
- (2) The court shall take the following into account in determining whether there is just cause—
- (a) whether there is a risk that —
 - (i) the defendant may fail to appear in court on the date to which the defendant was remanded;
 - (ii) the defendant may interfere with witnesses or evidence or otherwise obstruct the course of justice, whether in relation to himself or another person;
 - (iii) the defendant may offend while on bail;
 - (b) whether he should be kept in custody for his own protection or if he is a child, juvenile or young person, for his own welfare;
 - (c) any matter that would make it unjust to detain the defendant.

(3) The court may take into account the following matters in determining whether there is just cause to deny bail under subsection (2)—

- (a) the nature of the offence with which the defendant is charged, and whether it is a grave or less serious one of its kind;
- (b) the strength of the evidence and the probability of conviction or otherwise;
- (c) the seriousness of the punishment to which the defendant is liable and the severity of the punishment that is likely to be imposed;
- (d) the character and past conduct or behaviour in particular proven criminal behaviour, of the defendant;
- (e) whether the defendant has a history of offending while on bail, or breaching court orders, including orders imposing bail conditions;
- (f) the likely length of time before the matter comes to hearing or trial;
- (g) the possibility of prejudice to the defence in the preparation of the defence if the defendant is remanded in custody; or
- (h) any special matter that may be relevant in the particular circumstances.

Subsequent bail hearing after bail denied

8. (1) A court may where bail was denied allow a defendant to be heard in the following circumstances—

- (a) where there has been a change in circumstances since the initial hearing; or
- (b) where there was an error in law made by the Judge and any proceeding under section 67.

(2) Where a court has denied bail there shall be an automatic return for review and monitoring within forty five working days of the denial of bail.

Restrictions on bail for specified offences

9. A defendant shall not be granted bail except by order of the Chief Justice or a Judge—

- (a) if charged with an offence specified in Schedule 1;

- (b) if charged with an offence involving the use of firearm from paragraph (g) to (o) in Schedule 1.

Restrictions on bail for drug dealing offences

10. (1) A defendant charged with an offence under the Control of Drugs Ordinance shall not be granted bail except by order of a Judge.

(2) A defendant who is charged with a Class A drug offence under the Control of Drugs Ordinance shall satisfy the Supreme Court on the balance of probabilities that he will not, while on bail, commit any drug dealing offence.

(3) A defendant who is charged with an offence under the Control of Drugs Ordinance shall not be admitted to bail unless the person has provided a surety or sureties of a sum not exceeding \$50, 000 or such greater amount as is in the opinion of the court granting bail is sufficient to secure his appearance.

(4) Subsection (1) shall not apply to a defendant who is an Islander within the meaning of the Immigration Ordinance and who is ordinarily resident in the Islands at the time when the application for bail is made.

(5) Subsection (1) shall not apply to a defendant charged a class A drug offence under the Control of Drugs Ordinance where the quantity of the drug involved is not greater than four ounces in weight.

Granting bail to a juvenile

11. (1) Subject to the Juveniles Ordinance, a police officer shall release a juvenile who is in detention in police custody on suspicion of committing an offence into the care of the parent of the juvenile or guardian or an appropriate adult before the juvenile appears before the appropriate court unless—

- (a) the offence is one of murder or other violent crime;
- (b) the parent of the juvenile or the guardian or appropriate adult cannot be located or is not available and all reasonable efforts have been made to locate the parent or guardian or appropriate adult;
- (c) there is a substantial risk that the juvenile may be a danger to any other person or to himself;
- (d) it is necessary in his interest to remove him from association with any reputed criminal or danger;
or

(e) exceptional circumstances as may be prescribed warrant detention.

(2) A police officer may, in consultation with the Director of Public Prosecutions or a designated prosecutor, release into the care of the parent or an appropriate adult a juvenile who—

- (a) is in detention in police custody and who is accused of an offence referred to in Schedule 2; or
- (b) is accused of an offence referred to in Schedule 3 but has not been released pursuant to subsection (1).

(3) Notwithstanding, a prior decision of a police officer not to release a juvenile, a court may authorise the release of a juvenile from detention in police custody into the care of a parent or appropriate adult pending the appearance of the juvenile at a court ordered assessment and subsequently at a court ordered inquiry even if the juvenile is accused of committing an offence set out under Schedule 2.

(4) A juvenile may be released on bail on condition that the juvenile—

- (a) appears at a specified place and time for the court ordered assessment;
- (b) does not interfere with a witness, tamper with evidence or associate with a person or group of specified people; and
- (c) resides at a particular address.

(5) A police officer who releases a juvenile from detention in police custody on the authority of the court shall give to the juvenile and the person into whose care the juvenile is released, a prescribed notice which sets out—

- (a) the offence in respect of the juvenile,
- (b) the conditions on which the juvenile was released; and
- (c) a warning that the notice shall be complied with.

(6) A court ordered assessment of a juvenile shall be conducted by a social worker selected and appointed by the court.

(7) An initial inquiry ordered by the court shall take place after an assessment and before trial by a court and the objective shall be to determine the suitability of the juvenile for diversion away from the formal procedures of the court.

(8) A police officer shall not release a juvenile accused of an offence referred to in Schedule 4 or of murder or treason from detention in police custody.

(9) Where a juvenile cannot for any reason be released into the care of his parent or an appropriate adult, the juvenile shall, in lieu of detention in police custody, be detained in a place of safety.

(10) For the avoidance of doubt, a juvenile to whom subsections (8) and (9) refers shall be taken to court for a determination under subsection (8) or (9).

(11) Directives regarding the amounts that may be set for bail for the release of a juvenile pursuant to this Ordinance may be prescribed.

Granting bail with accommodation requirements

12. (1) The court may in granting bail to a defendant impose an accommodation requirement to a specified address in an island.

(2) Where the court imposes an accommodation requirement under subsection (1) the court shall give reasons for the imposition.

(3) An accommodation requirement may be imposed—

- (a) where the defendant is a child or juvenile;
- (b) to enable the defendant to be admitted to a rehabilitation facility or mental health facility for treatment on his release; or
- (c) in any other circumstances the court may consider fit or in any prescribed circumstances.

(4) In this section—

“accommodation requirement” means arrangements to be made for the accommodation of defendant before he is released on bail.

Bail hearing may be in private

13. A court may having regards to the interests of a party to the proceedings and to the public interest order—

- (a) that the whole or any part of an application for bail; or
- (b) an appeal against a bail decision,

be heard in private, on a case by case basis.

Publication of matters relating to hearing

14. A court may make an order, on application of a party to the proceedings—

- (a) that permits publication of all or any of the following details—
 - (i) the identity of the defendant applying for bail;
 - (ii) the charges faced by the defendant;
 - (iii) the decision of the court on the application;
 - (iv) the conditions of bail, if bail is granted; or
- (b) that prohibits publication of all or any of the details in paragraph (a)(i) to (iv),
on a case by case basis.

Evidence in bail hearing

15. A court may receive as evidence any statement, document, information or matter that it considers relevant, whether or not it would be otherwise admissible in a court of law.

PART III**POLICE BAIL****Interpretation Part III**

16. For the purposes of this Part—

“police officer” means an officer of the rank of inspector or above.

Police may grant bail

17. A police officer may if he considers it prudent to do so, grant bail to a defendant who is suspected of an offence, charged with an offence and has been arrested without a warrant.

Notice of police bail

18. (1) Where a police officer grants police bail under section 17 he shall issue a completed prescribed notice in accordance with subsection (2).

(2) A notice of police bail shall state the following particulars—

- (a) the date;
- (b) the defendant's full name and address;
- (c) the particulars of the charge;

- (d) the conditions of bail, including the time, date, and place for attendance by the defendant before a court or the police station;
- (e) any other information required that may be prescribed.

Conditions of police bail

19. (1) Where a police officer grants bail it shall be with the condition that the defendant shall personally attend before a court or at a police station at the time, date, and place specified in the notice issued under section 18.

(2) A police officer who grants bail may also impose the conditions provided for in section 24 in addition to the condition under subsection (1).

Failure to answer police bail

20. A defendant granted bail under section 17 and who fails without reasonable excuse to attend personally at the time and the court specified in the notice under section 17 commits an offence and shall be liable on conviction to a fine not exceeding \$5000 or to a term of imprisonment not exceeding twelve months or to both.

Failure to surrender to custody

21. A defendant granted bail under section 17 and who fails to surrender to custody commits an offence and shall be liable on conviction to a fine not exceeding \$5000 or to a term of imprisonment not exceeding twelve months or to both.

Failure to observe curfew

22. A defendant granted bail under section 17 and who fails to observe the curfew stipulated in the notice under section 18 commits an offence and shall be liable on conviction to a fine not exceeding \$5000 or to a term of imprisonment not exceeding twelve months or to both.

PART IV

COURT BAIL

Bail on adjournment

23. (1) A Judge or a Magistrate may grant bail in any criminal proceedings for an adjournment to a defendant.

(2) A Registrar may exercise the power conferred by subsection (1) to grant bail if both parties to the criminal proceedings agree.

Conditions for bail

24. (1) The court may in granting bail attach the conditions below only where it is considered necessary for the matters set out in section 7—

- (a) require the accused to surrender to custody;
- (b) set a curfew and doorstep policy;
- (c) require the accused to report to a police station at the times and with the frequency as may be required;
- (d) require the accused to surrender his passport to a police officer;
- (e) stipulate that the defendant keep the peace or be of good behaviour;
- (f) impose that the defendant will not do or commit some act or thing;
- (g) request the defendant to pledge as security any vessel, vehicle or aircraft held in connection with the offence with which the accused is charged;
- (h) require the defendant to deposit a sum of money by way of security;
- (i) impose any other lawful requirement that the court may think fit;
- (j) request the defendant to provide before release on bail, one or more sureties to secure the defendant's surrender to custody.

(2) A police officer who grants bail under Part III may only impose the passport condition on an application to the court.

(3) A defendant granted police bail under this Ordinance shall as a condition be charged within six months of being granted bail.

Electronic Monitoring as a further condition

25. A court may impose, as a further condition, electronic monitoring under Part V.

Variation of conditions of bail

26. Where a court has granted bail to a defendant, the court 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 in respect of bail which it has granted unconditionally, impose conditions.

Imposition of drug or alcohol condition

27. A court or a police officer may impose a drug and alcohol condition, under Part VI where applicable, but in particular to cases where drugs or alcohol played a factor in the offence committed.

PART V**ELECTRONIC MONITORING CONDITION****Electronic monitoring conditions**

28. The court may impose an electronic monitoring condition to restrict and monitor a defendant movements to ensure that the defendant—

- (a) appears in court on the date to which the defendant has been remanded;
- (b) does not interfere with any witnesses or any evidence against the defendant; or
- (c) does not commit any offence while on bail.

When court may grant bail with electronic monitoring condition

29.(1) A court may grant bail with an electronic monitoring condition—

- (a) if the court is satisfied that the matters set out in section 31 are applicable;
- (b) if the defendant is eligible for bail with an electronic monitoring condition;
- (c) if the defendant is in custody on remand.

(2) For the purposes of the grant of bail with an electronic monitoring condition, the court includes a Registrar or a police

officer in any circumstances in which a Registrar or a police officer is empowered to grant bail.

Application for bail with electronic monitoring condition

30. (1) An application for bail with an electronic monitoring condition shall be in a prescribed form.

(2) On receiving the application the court shall set the matter down for a hearing and shall notify the defendant, the Director of Public Prosecutions and the police of the date, time and place of the hearing.

(3) The application for bail with an electronic monitoring condition shall state the following particulars—

- (a) the date;
- (b) the defendant's full name and address;
- (c) the particulars of the charge;
- (d) the proposed address at which the electronic monitoring will take place;
- (e) a description of the premises where the defendant will be monitored;
- (f) health particulars of the defendant;
- (g) any other information required that may be prescribed.

Matters to be considered before granting bail with electronic monitoring condition

31. The court shall be satisfied that—

- (a) the defendant has been made aware of and understands his obligations under the electronic monitoring condition;
- (b) the defendant agrees to comply with the requirements of the electronic monitoring condition;
- (c) it is practicable for the defendant to remain at the proposed electronic monitoring address while on bail with an electronic monitoring condition;
- (d) the proposed electronic monitoring address is appropriate for the purpose of bail with an electronic monitoring condition;
- (e) every relevant occupant of the proposed monitoring address has consented to the defendant

remaining at the proposed electronic monitoring address while on bail with an electronic monitoring condition;

- (f) in each case the consent of the relevant occupant has been obtained.

Defendant's obligations under an electronic monitoring condition

32. (1) A defendant who is on bail with an electronic monitoring condition shall—

- (a) submit to the electronic monitoring of his compliance with the restrictions set out in paragraphs (b) and (c);
- (b) not leave the electronic monitoring address at any time except—
 - (i) as authorised by the court;
 - (ii) to attend to his scheduled court appearances;
 - (iii) to seek urgent medical or dental treatment;
 - (iv) to avoid or minimise a serious risk of death or injury to the defendant or any other person;
 - (v) to surrender himself to police custody;
- (c) remain in the area of the electronic monitoring address, as defined by the court except when leaving the electronic monitoring address as permitted under paragraph (b);
- (d) co-operate with, and comply with any lawful direction given by a Monitoring Officer;
- (e) present himself at the door of the electronic monitoring address when required to do so by a police officer or monitoring officer;
- (f) keep the notice of bail in his possession at the electronic monitoring address and shall present it when required by a police officer;
- (g) not tamper with or damage the electronic monitoring equipment or do anything with the intention of interfering with the functioning of an electronic monitoring equipment.

(2) A defendant who breaches an obligation under subsection commits a breach of his electronic monitoring condition.

Matters for electronic monitoring to be prescribed

33. The Governor may by regulations provide for—

- (a) the types of premises at which electronic monitoring may take place;
- (b) the obligations the defendant will undertake at an address under an electronic monitoring condition;
- (c) the manner in which an authorised absence from an electronic monitoring address shall be communicated to the Electronic Monitoring Centre;
- (d) the form in which a person may consent to electronic monitoring who resides at the proposed electronic monitoring address;
- (e) the process for a change of electronic monitoring address where the approved address becomes unsuitable or unavailable through a change of circumstances.

Director of Electronic Monitoring Centre

34. (1) There shall be a Director of the Electronic Monitoring Centre, who shall be responsible subject to the general control of the Governor for the management and administration of the Department.

(2) There shall be other officers of the Electronic Monitoring Centre, to be called Deputy Director and Monitoring Officers who shall perform duties as may be assigned from time to time to them by the Director.

Functions of the Director

35. The Director shall be responsible for the following—

- (a) to monitor the use of the monitoring devices;
- (b) to manage the ordering, storing and distribution of monitoring devices;
- (c) to ensure the servicing of the electronic monitoring devices every six months;
- (d) to liaise with the police to develop protocols for the use of electronic monitoring devices in the Islands;
- (e) to liaise with the police to ensure that the protocols developed under paragraph (d) are adhered to on a consistent basis;

- (f) to advise the Governor on subsidiary legislation for matters relating to the implementation and enforcement of electronic monitoring;
- (g) to perform other functions as are conferred on him by virtue of this or any other Ordinance or any regulations made under this Ordinance.

Power of entry

36. The Director in carrying out the functions under section 35 may—

- (a) enter a premises with a warrant for the purpose of preventing the commission of an offence under section 44;
- (b) to arrest without warrant any person committing an offence under section 44 or 45 or whom a Monitoring Officer reasonably suspects to be committing, to have committed or be about to commit an offence under section 44 or 45;
- (c) to seize any article, item or thing of whatever kind that he reasonably suspects has been used in the commission of an offence under section 44 or 45 until the determination of proceedings in respect of that offence.

Delegation of functions by Director

37. (1) The Director may delegate in writing to the Deputy Director and any Monitoring Officer any of the functions conferred or imposed on him under section 35 or any other section of this Ordinance, than the power of delegation under this section.

(2) The Director may at any time revoke a delegation under subsection (1).

(3) A delegation under subsection (1) does not prevent the exercise by the Director himself of a power so delegated.

Monitoring reports for electronic monitoring bail conditions

38. (1) Where a defendant applies for bail with an electronic monitoring condition, the court may direct that a monitoring officer prepares an electronic monitoring report in relation to the application.

(2) The court shall utilise an electronic monitoring report to assist the court hearing the application in determining whether an electronic monitoring condition is practicable and appropriate.

(3) An electronic monitoring report shall address all of the following matters—

- (a) whether an electronic monitoring condition is appropriate;
- (b) whether an electronic monitoring condition is practicable at the proposed electronic monitoring address, including whether the monitoring equipment will function adequately at that address;
- (c) whether the proposed electronic address is appropriate for electronic monitoring of the defendant, including whether there is any evidence of violence between—
 - (i) the defendant and any occupant of the premises at that address; and
 - (ii) the defendant and any person who may reasonably be expected to visit those premises.
- (d) whether every relevant person at the premises at the proposed electronic monitoring address has consented;
- (e) whether the defendant has been charged with an offence specified in Schedule 5.

(4) An electronic monitoring report may address any of the following matters—

- (a) the defendant's personal circumstances, including employment, training and childcare commitments;
- (b) recommendations for other bail conditions;
- (c) the response of the prosecutor to the application, including any reasons for opposing it;
- (d) any other matter that the electronic monitoring officer considers to be relevant to the decision whether or not to grant a defendant bail with an electronic monitoring condition.

Use of information obtained for an electronic monitoring report

39. The information obtained for the purpose of preparing an electronic monitoring report is restricted to the following uses—

- (a) in the determination of the application to which the report relates;
- (b) in the preparation of a pre-sentence report in relation to the defendant;
- (c) in any other use to which the defendant has consented.

Use of information obtained from electronic monitoring

40. The information obtained from the electronic monitoring of a defendant on bail with conditions imposed under section 28 may be used for the purposes set out in that section and for any of the following purposes—

- (a) to verify compliance by the defendant with the bail conditions’;
- (b) to determine the defendant’s non-compliance with the bail conditions and to provide evidence of that non-compliance;
- (c) to determine whether the defendant commits an offence while on bail and to provide evidence of that offence;
- (d) to verify whether the defendant has tampered with or has otherwise interfered with the electronic monitoring equipment.

Court may remand defendant pending installation of electronic monitoring equipment

41. Where a court grants a defendant bail with electronic monitoring conditions the court may postpone the commencement of the bail and may remand the defendant in custody for a period reasonably necessary for—

- (a) the installation of the electronic monitoring equipment at the address provided for the electronic monitoring;
- (b) the making of any other arrangements that will enable the defendant to comply with the electronic monitoring conditions made under section 28.

Defendant on bail with electronic monitoring condition not in custody

42. For the avoidance of doubt, a defendant who is on bail with an electronic monitoring condition is not to be regarded as being held in custody.

Subsequent application for bail with electronic monitoring condition

43. Nothing in this Ordinance prevents a defendant, who has previously applied for bail without an electronic monitoring condition and who has been refused, from subsequently applying for bail with an electronic monitoring condition on the same charges.

Breach of bail conditions with electronic monitoring device

44. A defendant who breaches any of his electronic monitoring bail conditions by—

- (a) attempting or taking off the tracker on the electronic monitoring device;
- (b) leaving the electronic monitoring address without permission;
- (c) deviating from the agreed period of absence from the electronic monitoring address;
- (d) returning late from a planned absence;
- (e) neglecting to charge the electronic monitoring device; or
- (f) breaking any prescribed breaches,

commits an offence and is liable on conviction to a fine of \$5,000 or a term of imprisonment of twelve months or both.

Offence of tampering with electronic monitoring device

45. A defendant who tampers, damages or destroys an electronic monitoring device commits an offence and is liable on conviction to a fine of \$5,000 or a term of imprisonment of twelve months or both.

PART VI**TESTING AND MONITORING OF DEFENDANTS ON BAIL WITH DRUG OR ALCOHOL CONDITIONS**

Testing or submission to continuous monitoring

46. (1) An authorised person may, by notice given to a defendant who is on bail (other than police bail) with a drug or alcohol condition, require the defendant to do one or more of the following—

- (a) undergo testing for a controlled drug, a psychoactive substance or for alcohol, using a testing procedure to be prescribed;
- (b) submit to continuous monitoring of the defendant's compliance with the drug or alcohol condition through a drug or alcohol monitoring device of a type to be prescribed, during a reasonable period to be specified in the notice.

(2) An authorised person may only exercise his discretion under subsection (1) in compliance with the rules to be prescribed for the exercise of that discretion.

(3) Only a medical practitioner or medical officer may collect a blood sample from a defendant under this section.

(4) In this section—

“authorised person” means a person who is—

- (a) a police officer; or
- (b) an employee of the court or a person appointed by the court.

Forms of notice to undergo testing or to submit to continuous monitoring

47. An authorised person may give a defendant notice under section 46 in any of the following ways—

- (a) by giving the notice personally and in writing to the defendant;
- (b) by giving the notice personally and orally to the defendant as soon as is practical recording it in writing and giving a copy to the defendant;
- (c) by giving notice by telephone and other electronic means and as soon as is practical recording it in writing and giving a copy to the defendant.

Place for prescribed testing

48. (1) An authorised person may require a defendant to undergo testing—

- (a) at a place where the defendant is given notice;
- (b) at a police station;
- (c) at a hospital;
- (d) at a court building;

(2) Where the testing involves the collection of blood and urine, the testing shall be confined to the place specified in subsection 1(c).

(3) A defendant shall report to the testing place whose name and location are specified in the notice, at the time or times specified, to undergo testing.

(4) An authorised person may administer a random testing in prescribed circumstances.

Breach of drug or alcohol condition

49. A defendant on bail with a drug or alcohol condition breaches the condition if the defendant—

- (a) uses a controlled drug or a psychoactive substance, or consumes alcohol, in contravention of the condition;
- (b) refuses or fails, without reasonable excuse—
 - (i) to undergo a testing procedure when required to do so under section 46 (1)(a);
 - (ii) to submit to continuous monitoring when required to do so under section 46(1) (b);
 - (iii) to comply with instructions specified in the notice under section 48 (1) (b) which are reasonably necessary for the effective administration of the continuous monitoring of the defendant;
 - (iv) to accompany an authorised person, when required to do so under section 48 (4) to a place where it is likely that it will be reasonably practicable for the defendant to undergo testing;
 - (v) to report, at any time or times when required to do so under section 48 (3), to a specified testing facility to undergo testing;
 - (vi) to undergo a testing procedure when required to do so under section 48 (3);

- (vii) to allow an authorised person to enter the defendant's residential address for all or any of the following purposes —
 - (a) attaching a drug or alcohol monitoring device to, or removing the device from, the defendant;
 - (b) servicing or inspecting the device;
 - (c) installing, removing, servicing, or inspecting any equipment necessary for the operation of the device;
- (c) does anything with the intention of diluting or contaminating a bodily sample required under section 46 (1) (b) for the purpose of a prescribed testing procedure; or
- (d) tampers with a drug or alcohol monitoring device required under section 46 (1) (b) or does anything with the intention of interfering with the functioning of that device.

Information obtained from drug and alcohol testing or monitoring

50. (1) Information obtained from a prescribed testing procedure or a drug or alcohol monitoring device required under section 46 (1) may be used for all or any of the following purposes—

- (a) verifying compliance by the defendant with a drug or alcohol condition;
- (b) detecting non-compliance by the defendant with a drug or alcohol condition, and providing evidence of that compliance;
- (c) verifying that the defendant has not tampered or otherwise interfered with a drug or alcohol monitoring device;
- (d) any purpose for which the defendant has requested, or consented to, the information being used.

(2) Information obtained from a prescribed testing procedure or a drug or alcohol monitoring device shall not, except at the request or with the consent of the defendant, be used as evidence that the defendant committed an offence or for any other purpose not listed in subsection (1).

(3) The court may, in the absence of evidence that is available to the court and that is to the contrary effect, presume that any information that an authorised person has certified in writing was obtained from a prescribed testing procedure or a drug or alcohol monitoring device—

- (a) is accurate; and
- (b) was obtained in the manner required by sections.

PART VII

PROCEDURES AFTER DEFENDANT GRANTED BAIL

Release of defendant granted bail

51. (1) Where a defendant is granted bail, the court shall prepare a notice of bail or a bond for bail (whichever is applicable) setting out the conditions of the bail under section 24.

(2) Where electronic monitoring is a condition of bail, the notice of bail shall—

- (a) state the address for electronic monitoring;
- (b) set out the defendant's obligation under an electronic monitoring condition.

(3) The Registrar, or prison superintendent (or as the case may be) shall—

- (a) give the notice of bail or a bond for bail to the defendant;
- (b) be satisfied that the defendant understands the conditions of bail; and
- (c) require the defendant to sign the notice of bail or a bond for bail.

(2) A copy of the notice of bail or bond for bail shall be given to the defendant on his release or as soon as practicable after his release.

Qualification of surety

52. Where the court under section 24 grants bail to a defendant with the condition for a surety, the court shall assess the suitability of a surety taking into account the following—

- (a) the financial resources of the person;
- (b) the character and antecedents of the person;
- (c) the proximity of the person to the defendant;

- (d) the readiness of the person to comply with the obligations of being a surety;
- (e) whether the person is also on bail after being charged with the alleged commission of a criminal offence.

Discharge of a surety

53. (1) A person who acts as a surety shall be discharged under any of the following conditions—

- (a) where the Director of Public Prosecution enters a declaration of *nolle prosequi* as it relates to the defendant;
- (b) where the charges against the defendant have been dismissed;
- (c) where the defendant has been acquitted; or
- (d) where the defendant has been convicted and remanded into custody pending sentence.

(2) A surety shall apply to the court to obtain permission to be discharged from acting as a surety, and may be required to attend a hearing to present arguments to support the application.

(3) A defendant whose surety has been discharged from the obligation of acting as a surety shall be notified as soon as possible, and if the defendant does not have another surety, he shall be taken into custody.

Variation of conditions of bail in Magistrate Court

54. (1) Where the proceeding for the offence with which the defendant has been charged is in the Magistrate Court, the court may—

- (a) in the case of bail, on the application of the defendant through an email to the Registrar where bail is of right, make an order revoking any condition of bail or substituting any other condition of bail;
- (b) in the case of a variation of bail, on the written application of the defendant with supporting affidavit evidence, may make an order varying any condition of bail or substituting any other condition of bail;
- (c) in the case of an electronic monitoring condition, on the application of the defendant or monitoring

officer, make an order varying the electronic monitoring address.

(2) The Magistrate may exercise his discretion to vary the condition of bail at any stage of the proceeding.

Variation of conditions of bail in Supreme Court

55. Where the proceeding for the offence with which the defendant has been charged is in the Supreme Court, the Judge may—

- (a) in the case of a variation of bail, on the application of the defendant, Director of Public Prosecution or a police officer with supporting affidavit evidence, make an order varying or revoking any condition of bail or substituting any other condition of bail or imposing a further condition;
- (b) in the case of an electronic monitoring condition, on the application of the defendant or Director of Public Prosecution make an order varying the electronic monitoring conditions.

Surrender of defendant on bail with electronic monitoring condition

56. (1) A defendant on bail with an electronic monitoring condition—

- (a) shall surrender himself to police custody if, for any reason (including the withdrawal of the consent of a relevant occupant), he is unable to remain at the electronic monitoring address and no suitable temporary electronic monitoring address is available;
- (b) shall surrender himself to a police officer custody pending the determination of an application under sections 54 and 55 to vary the electronic monitoring address or to revoke the electronic monitoring condition.

(2) A constable shall bring a defendant with an electronic monitoring condition who surrenders himself to police custody before a court at the earliest opportunity.

Defendant on bail may be arrested without warrant in certain circumstances

57. (1) A constable may arrest without warrant a defendant who has been released on bail by a court or Registrar or police officer where the constable believes on reasonable grounds that—

- (a) the defendant has absconded or is about to abscond for the purpose of evading justice;
- (b) the defendant has contravened or failed to comply with any condition of bail;
- (c) the defendant is not likely to surrender to custody;
- (d) the defendant is unlikely to surrender to custody and in that regard he has received notice from a surety that he wishes to be relieved of his obligation as surety.

(2) A defendant who is arrested under subsection (1) shall as soon as practicable, be brought before—

- (a) the court which granted him bail;
- (b) the police officer who granted him bail, or, if that police officer is not available, a police officer of a rank equal to or higher than the rank of the police officer that granted him bail, as the case may be.

(3) For the avoidance of doubt, where a defendant is brought before a police officer under section 2(b), the police officer shall take the defendant before the court without delay.

(4) A court before whom a defendant is brought under subsections (2) and (3) shall remand the defendant in custody where the court is of the opinion that the defendant—

- (a) is not likely to surrender to custody; or
- (b) is likely to break or has broken a condition of his bail, but if not of that opinion shall release him on bail subject to the same conditions if any, as were originally imposed.

Offence where authorised person refused entry to an electronic monitoring address

58. (1) A person commits an offence who refuses or fails, without reasonable excuse, to allow a monitoring officer or police officer for the purpose of servicing or inspecting any electronic monitoring equipment at that address.

(2) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding \$3, 000 or to eighteen months imprisonment or to both.

Warrant of arrest of defendant absconding or breaching bail

59. A defendant who attempts to or who absconds commits an offence and shall be liable on summary conviction to a fine not exceeding \$3, 000 or to eighteen months imprisonment or to both.

Failure to answer bail

60. A defendant who having been released on bail by the court or Registrar—

- (a) fails without reasonable excuse to attend personally at the time and the court specified in the notice of bail or bail bond;
- (b) fails without reasonable excuse to attend personally at any time and place to which during the course of the proceedings the hearing has been adjourned;
- (c) fails without reasonable excuse to comply with any of the following condition—
 - (i) where in a case where the court deferred sentencing and has imposed the condition for the defendant to go and remain at a specified address in an island pursuant to an accommodation requirement under section 12;
 - (ii) where he fails to advise a probation officer or monitoring officer as soon as possible of any change in circumstances affecting the availability or suitability of the place where the accommodation requirement was made or the electronic monitoring address was ordered,

commits an offence and shall be liable on summary conviction to a fine not exceeding \$3, 000 or to eighteen months imprisonment or to both.

Non-performance of condition of bail may be certified and recorded

61. (1) Where a defendant who, released on bail, fails to comply with any condition of bail, the court may certify on the

notice of bail, or, as the case may require, the bail bond, the non-performance of that condition.

(2) In addition to the certification described in subsection (1), the court shall enter the nature of the condition and the non-performance of the condition in the court record.

Payment of bail money to the crown and return of money to surety

62. (1) Where a defendant's failure to comply with a condition of bail has been entered in the court's record under section 61, any money paid by a surety under a bail bond is subject to forfeiture.

(2) The court shall order money forfeited under a bail bond to be paid to the Crown, unless the court considers that equity and good conscience and the real merits and justice of the case require the money to be returned to the surety.

Bail on deferment of sentence

63. Where the court defers the start date of the sentence of a defendant, the court may grant or suspend bail.

PART VIII

APPEALS ON QUESTION OF BAIL

Appeals from decisions of Magistrate relating to bail

64. (1) Where a Magistrate refuses to grant bail to a defendant (whether before or after conviction) the defendant may appeal to the Supreme Court against that refusal.

(2) The defendant may appeal to the Supreme Court in respect of any grant of bail to a defendant (whether before or after conviction) against—

- (a) the imposition of a condition of bail;
- (b) an order varying or revoking any condition of bail;
- (c) an order substituting or imposing any other condition of bail; or
- (d) the refusal to make an order under paragraph (b) and (c).

(3) For the purposes of an appeal under this section, the failure of a Magistrate—

- (a) to impose any condition of bail; or
- (b) to impose any particular condition of bail,

on any occasion on which the condition could lawfully have been imposed is deemed to be a refusal to impose the condition.

(4) A person may seek bail under the Supremes' Court inherent jurisdiction—

- (a) where the person was refused bail by a Magistrate;
- (b) in respect of whom a Magistrate have imposed any condition of bail or refused to impose any condition of bail, or any particular condition of bail.

(5) An appeal under this section is by way of rehearing.

Procedure relating to a Magistrate's appeal under section 64

65. (1) A person shall commence an appeal under section 64 by filing—

- (a) a notice of appeal in the prescribed form if the appeal is to the Supreme Court;
- (b) a notice of application for leave to appeal, in the prescribed form, if the appeal is to the Court of Appeal

(2) A notice of appeal or notice of application for leave to appeal shall be filed within five working days after the date of the decision appealed against.

(3) A decision appealed against under section 64 shall not be suspended merely because notice of that appeal has been given.

(4) Where a decision that is appealed against ceases to have any effect, an appeal under section 64 which is not heard before the date the decision ceased to have effect—

- (a) lapses on the date the decision ceased to have effect; and
- (b) is deemed to have been abandoned.

(5) The court may determine an appeal under this section by—

- (a) confirming the decision appealed against;
- (b) varying the decision appealed against;
- (c) setting aside the decision appealed against; or
- (d) making any other order it considers appropriate.

Execution of decision of Supreme Court on appeal relating to bail from Magistrate Court

66. (1) Where on an appeal in respect of any condition of bail, the Judge varies or revokes any condition of bail or substitutes or imposes any other condition of bail, the following shall apply—

- (a) where the defendant is present at the Supreme Court, the registrar shall—
 - (i) as soon as is reasonably practicable, prepare a new notice of bail setting out the conditions of bail as amended (if any); and
 - (ii) satisfy himself that the defendant understands the conditions of bail;
 - (iii) require the defendant to authenticate the notice of bail.
- (b) where the defendant is not present, the registrar shall send a prescribed notice to the defendant requiring him to attend at a specified time and place for the execution of a fresh notice of bail containing the conditions (if any) required to give effect to the decision on the appeal.

(2) Where in any case to which subsection (3) applies—

- (a) the defendant fails without reasonable excuse to be present at the time and place required; or
- (b) fails to enter into a fresh notice of bail,

the Registrar shall refer the matter to the Supreme Court, who may issue a warrant for the arrest of the defendant.

Appeal from decision of Supreme Court relating to bail

67. A defendant may appeal to the Court of Appeal against any decision made (whether under any enactment or rule of law or otherwise) by a Judge to—

- (a) refuse bail to a defendant;
- (b) substitute or revoke or vary any condition of bail;
or
- (c) refuse to vary or revoke any condition of bail.

Procedure relating to appeal from the Supreme Court

68. (1) A defendant wishing to appeal under section 67 shall file a notice of appeal with the Registrar within twenty-one

working days after the date of the decision being appealed against.

(2) An appeal under section 67 that is not heard before the date on which the decision appealed against ceases to have any effect—

(a) lapses on that date; and

(b) is deemed to have been abandoned.

(2) A notice of appeal filed under section 67 shall not have the effect of suspending a decision of a Judge.

(3) An appeal under section 67 shall be heard by a single Judge of the Court of Appeal within twenty-one days of the filing of the appeal.

Court of Appeal may grant bail on appeal relating to bail

69. (1) Where on an appeal under section 67 against a refusal to grant bail to a defendant, the Court of Appeal determines that bail should be granted, the Court of Appeal shall order that the defendant be released on bail, subject to any conditions the Court of Appeal may think fit.

(2) Where on an appeal under section 67 against a refusal to grant bail to a defendant, the Court of Appeal revokes or amends a condition of bail or substitutes or imposes any other condition, the Registrar shall send a written notice to the defendant and to every surety (if any) requiring them to attend at a specified time and place for the execution of a fresh bail bond containing the conditions (if any) required to give effect to the Court of Appeal's decision.

(3) Where in any case to which subsection (2) applies, the defendant fails without reasonable excuse to attend at the time and place required, or fails to enter into a fresh bond, the Registrar shall refer the matter to a Judge who may issue a warrant for the arrest of the defendant.

Treatment of time arising from an appeal to Court of Appeal

70.(1) Subject to any directions the Court of Appeal may give to the contrary, the time during which a defendant is granted bail under section 67, shall not count as part of any term of imprisonment to which he may have been sentenced.

(2) Any such term of imprisonment whether passed by the court of trial or by the Court of Appeal shall, subject to any directions by the Court of Appeal, be deemed to begin to run or to be resumed—

- (a) as from the date when the appeal is determined;
- (b) as from the date when application for leave to appeal is refused; or
- (c) if the defendant is not in custody from the day on which he is received into prison under that sentence.

PART IX

WARRANT FOR DETENTION IN CUSTODY

Period for detention in custody

71. (1) A court may issue a warrant for detention in custody for whichever of the following applies—

- (a) for the period of adjournment;
- (b) pending and during the defendant's trial;
- (c) pending the defendant being brought up for sentence and during his sentencing.

(2) A defendant may be held in remand for a period not exceeding six hours.

Granting of bail to defendant in custody or home detention pending appeal to Supreme Court and Court of Appeal

72. (1) Where an appellant is appealing his conviction or sentence, or both to the Supreme Court or Court of Appeal, (as the case may be) and he is—

- (a) in custody; or
- (b) in a home detention residence subject to a sentence of home detention,

this section shall apply.

(2) The Court of Appeal or the Supreme Court (as the case may be) or the Judge who presided at the trial in the court below may, where the court thinks fit—

- (a) on the application of an appellant, and
- (b) on such terms and conditions

grant bail to the appellant pending the determination of the appeal, where the appellant is in custody, or is subject to a home detention, only under the conviction to which the appeal relates.

(3) Where an appeal is filed on a question of law and the appeal relates to a person's conviction, this section shall apply to the convicted person as it does to the appellant.

PART X

MISCELLANEOUS PROVISIONS

Offences

73. (1) A defendant commits an offence where after having been released on bail, the defendant—

- (a) fails without reasonable excuse, to surrender to custody at the appointed date and time;
- (b) interferes with a witness or witnesses, tampers with evidence or otherwise obstructs the case;
- (c) leaves the jurisdiction without informing the court or obtaining permission; or
- (d) breaches any other condition of bail,

is liable on conviction to a fine not exceeding \$5,000 or to a term of imprisonment of two years.

(2) A surety commits an offence, where the surety fails to report to the court knowledge that the defendant has breached a condition of bail and is liable on conviction to a fine not exceeding \$3,000 or to a term of imprisonment of two years

Amount of bail

74. The amount of bail to be taken in any case shall be in the discretion of the court by whom the order for taking bail is made.

Powers in relation to writ of habeas corpus not affected

75. For the avoidance of doubt, this Ordinance does not affect the powers of the Supreme Court in relation to a writ of habeas corpus.

Bail for contempt not affected

76. For the avoidance of doubt, this Ordinance does not affect any power or duty that a court, has to grant bail, or to grant relief in the nature of bail, for any contempt or alleged contempt.

Regulations

77. The Governor may make regulations generally for giving effect to this Ordinance, and for prescribing anything that is required to be prescribed by this Ordinance.

Amendment of Schedules

78. The Governor may by Order amend the Schedules from time to time.

Court Rules relating to practice and procedure of courts

79. The Chief Justice may make rules with respect to the powers, authorities, duties or functions of the Supreme Court and the Court of Appeal in respect of bail.

Rules about drug and alcohol testing and monitoring

80. The Governor may make rules for all or any of the following purposes—

- (a) to provide for one or more types of testing procedure that defendants on bail with a drug or alcohol condition may be required to undergo;
- (b) to specify how often each of the prescribed testing procedures may be carried out;
- (c) to prohibit authorised persons from requiring a defendant to undergo certain testing procedures if other less intrusive testing procedures are available and are sufficient in the circumstances;
- (d) to provide for one or more types of drug or alcohol monitoring device that may be connected to a defendant on bail with a drug or alcohol condition;
- (e) to specify restrictions as to how often and for how long continuous monitoring may be carried out;
- (f) to provide for one or more of the following, minimum levels that to be present in a bodily sample collected from a defendant in order for the sample to be used as evidence that the defendant has breached a drug or alcohol condition—
 - (i) controlled drugs;
 - (ii) psychoactive substances;
 - (iii) alcohol.

Consequential amendments

81. (1) The Court of Appeal Ordinance is amended as follows—

- (a) by repealing section 14;
- (b) in section 19(1) by repealing paragraph (d) and substituting the following—

“(d)to hear an appeal on bail within twenty one days;”

(2) The Police Force Ordinance is amended as follows—

- (a) by repealing section 31;
- (b) in section 32 by repealing subsection (2) and (3).

(3) The Firearm Related Offences (Detention and Bail) Ordinance is amended as follows—

- (a) in the title by deleting the words “and bail”; and
- (b) by repealing section 7.

(4) The Magistrate Court Ordinance is amended by repealing Part IX.

(5) The Control of Drugs Ordinance is amended by repealing section 35.

(6) The Juveniles Ordinance is amended by repealing section 10 and 11.

Savings

82. (1) The provisions of this Ordinance are in addition to those provisions of any other written law relating to bail.

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

(3) Despite the repeal of any enactment by this Ordinance, where any notice of appeal has been filed in any office of a court under any such enactment before the date of the commencement of this Ordinance, and the appeal is not finally determined before that date, the provisions of that enactment continue to apply to that appeal in all respects as if this Ordinance had not been passed.

SCHEDULE 1

(Sections 6,9)

OFFENCES SPECIFIED

- (a) murder;
- (b) treason;
- (c) rape;
- (d) human trafficking (ten years);
- (e) terrorism(fourteen years);
- (f) robbery;
- (g) possession of firearm or imitation firearm with intent to commit a serious offence, or with intent to resist or prevent the lawful arrest or detention of himself or another, or with intent to put any other person in fear;
- (h) shooting or wounding with intent to do grievous bodily harm, inflicting bodily injury with a weapon;
- (i) aggravated burglary, assault with intent to rob;
- (j) assault occasioning greivous bodily harm;
- (k) possession or use or both possession and use of firearm or ammunition with intent to endanger life or cause injury to property;
- (l) possession of a firearm or ammunition without licence, certificate or permit, contrary to the provisions of the Firearms Ordinance;
- (m) sexual assault;
- (n) an offence involving the possession or use of a weapon of offence;
- (o) a criminal act involving a firearm; and
- (p) gang-related activity contrary to the provisions of the Anti-Gang Ordinance.

SCHEDULE 2

(Sections 11 (2)(a))

JUVENILE OFFENCES SPECIFIED PART A

- (a) Assault involving the infliction of bodily harm.
- (b) Arson.
- (c) Robbery, other than robbery with aggravating circumstances, if the amount involved does not exceed \$1,000.

- (d) Larceny, where the amount involved does not exceed \$1,000.
- (e) Any offence under any law relating to the illicit possession of drugs where the quantity involved does not exceed 4 kilograms or is less than 2 litres in volume.
- (f) Forgery or fraud, where the amount concerned does not exceed \$2,000.
- (g) Any statutory offence where the penalty does not exceed \$1,000 or imprisonment of up to six months.
- (h) Any conspiracy, incitement or attempt to commit any offence referred to in this Schedule.

SCHEDULE 3

(Sections 11 (2)(b))

JUVENILE OFFENCES SPECIFIED PART B

- (a) Assault where grievous bodily harm has not been inflicted.
- (b) Malicious injury to property where damage does not exceed \$500.
- (c) Any offence under any law relating to the illicit possession of drugs where the quantity involved does not exceed 2 kilograms or is less than 1 litre in volume.
- (d) Theft, where the value of the property does not exceed \$500.
- (e) Any statutory offence where the maximum penalty determined by that statute does not exceed a fine of \$750 or imprisonment of up to three months.
- (f) Any conspiracy, incitement or attempt to commit any offence referred to in this Schedule.
- (g) any nonviolent offence not being an offence mentioned in Schedule 2.

SCHEDULE 4

(Sections 11 (8))

JUVENILE OFFENCES SPECIFIED PART C

- (a) Rape.
- (b) Robbery—
 - (i) Where there are aggravating circumstances;
 - (ii) involving the taking of a motor vehicle.
- (c) Indecent assault involving the infliction of grievous bodily harm.
- (d) Indecent assault on a person under the age of eighteen years.
- (e) Drug trafficking possession with intent to supply.
- (f) Any conspiracy or incitement to commit an offence referred to in this Schedule or an attempt to commit any of the offences referred to in paragraph (a) or (b) of this Schedule.
- (g) Manslaughter
- (h) Gang-related activity contrary to the provisions of the Anti-Gang Ordinance

SCHEDULE 5

(Sections 38 (3)(e))

SPECIFIED OFFENCES FOR WHICH RIGHTS OF VICTIMS ARE TO BE
TAKEN INTO ACCOUNT TO DETERMINE APPROPRIATENESS OF AN
ELECTRONIC MONITORING CONDITION

- (a) An offence of a sexual nature specified in Part II of the Sexual Offences Ordinance.
- (b) An offence of serious assault that does not come within paragraph (a).
- (c) An offence that has resulted in serious injury to a person, in the death of a person, or in a person becoming incapacitated.
- (d) An offence of another kind, and that has led to the victim having ongoing fears, on reasonable grounds—
 - (i) for his physical safety or security; or
 - (ii) for the physical safety or security of one or more members of his immediate family.

PASSED by the House of Assembly this day of 2025.

.....
Tracey Parker
Clerk of the Parliament

.....
Gordon Burton
Speaker

DRAFT

EXPLANATORY MEMORANDUM

This Bill seeks to reform, modernise and consolidate the law on bail in the Islands. The Government finds that there is the need to reform and restate the law on bail in line with the protection afforded by sections 5 and 6 of the Constitution for the liberty of each individual in the Islands. The Government also finds that there is the need to create a comprehensive statute to address all matters connected to the grant or refusal of bail in criminal proceedings at all levels of the court and to provide for the process to address breaches of the same. The Government further finds that a comprehensive bail legislation is necessary to ensure that the grant or refusal of bail is governed by clear, uniformed rules that will guide the judiciary and the police in the exercise of their discretion to grant bail. The Government also further finds that the clear articulation of the rules will also provide a level of predictability to stakeholder institutions and the public and that it will lead to an increase in confidence in the delivery of justice in the Islands.

Therefore, the purposes of this Ordinance is to provide for the following—

- (a) to provide a framework within which—
 - (i) a person's right not to be denied bail without reasonable cause is upheld;
 - (ii) the right to liberty is upheld;
 - (iii) the presumption of innocence is upheld.
- (b) to make the ordinance applicable to all persons arrested, charged, or convicted with an offence including person arrested, charged or convicted under legislation providing for extradition;
- (c) to provide that a defendant is bailable as of right who is charged with an offence that is not punishable by imprisonment or is charged with a non-violent offence in keeping with the fundamental principles in section 5 and 6 of the Constitution;
- (d) to provide the following rules to determine whether bail should be granted—
 - (i) a person who is charged with an offence shall not be held in custody without the question of

bail being considered for a period not exceeding twenty -four hours;

(ii) a person charge with an offence of—

- (a) murder;
- (b) treason;
- (c) rape;
- (d) human trafficking (ten years);
- (e) terrorism(fourteen years);
- (f) robbery
- (g) possession of firearm or imitation firearm with intent to commit a serious offence, or with intent to resist or prevent the lawful arrest or detention of himself or another, or with intent to put any other person in fear;
- (h) shooting or wounding with intent to do grievous bodily harm, inflicting bodily injury with a weapon;
- (i) aggravated burglary, assault with intent to rob;
- (j) assault occasioning actual bodily harm;
- (k) possession or use or both possession and use of firearm or ammunition with intent to endanger life or cause injury to property;
- (l) possession of a firearm or ammunition without licence, certificate or permit, contrary to the provisions of the Firearms Ordinance;
- (m) sexual assault;
- (n) an offence involving the possession or use of a weapon of offence;
- (o) a criminal act involving a firearm; and
- (p) gang-related activity contrary to the provisions of the Anti-Gang Ordinance,

may only be granted bail if he satisfies the court that bail should be granted

- (e) to establish that in determining whether bail should be denied the court shall take into account whether there is just cause to deny bail;

- (f) to restrict the granting of bail except by order of the Chief Justice or a Judge—
 - (i) if charged with an offence specified in Schedule 1;
 - (ii) if charged with an offence involving the use of firearm;
- (g) to provide restrictions on bail for drug dealing offences;
- (h) to establish the framework for granting bail to a juvenile in the Islands;
- (i) to impose accommodation requirements in the granting of bail to a defendant to a specified address in an island;
- (j) to provide the framework for a police officer of the rank of inspector or above to grant police bail;
- (k) to provide the framework administrative and otherwise to enable the court to impose an electronic monitoring condition to restrict and monitor a defendant's movements in the Islands to ensure that the defendant—
 - (i) appears in court on the date to which the defendant has been remanded;
 - (ii) does not interfere with any witnesses or any evidence against the defendant; or
 - (iii) does not commit any offence while on bail.
- (l) to establish a Electronic Monitoring Centre and to appoint a Director who shall be responsible for –
 - (i) to monitor the use of the monitoring devices;
 - (ii) to manage the ordering, storing and distribution of monitoring devices;
 - (iii) to ensure the servicing of the electronic monitoring devices every six months;
 - (iv) to liaise with the police to develop protocols for the use of electronic monitoring devices in the Islands;
 - (v) to liaise with the police to ensure that the protocols developed under paragraph (d) are adhered to on a consistent basis;
 - (vi) to advise the Governor on subsidiary legislation for matters relating to the

implementation and enforcement of electronic monitoring;

(vii) to perform other functions as are conferred on him by virtue of this or any other Ordinance or any regulations made under this Ordinance.

(m) to provide for the testing and monitoring of defendants on bail with drug or alcohol conditions; and

(n) to provide for appeals at the Magistrate Court, Supreme Court and Court of Appeal.

THE BILL

The bill is made up of ten parts.

PART I

Part I provides the preliminary provisions, the short title and commencement, interpretation, the purpose of the legislation and the application of the legislation and contains clauses 1 to 4.

PART II

Part II of the Bill provides the general provisions regarding bail by setting out the eligibility for bail, the rules for granting bail, the circumstances in which bail may be denied, for the holding of subsequent bail hearing after bail has been denied, for providing for the restrictions on bail for specified offences listed in Schedule 1, to provide for restrictions on bail for drug dealing offences, by providing the framework for granting bail to juveniles, by providing for the granting of bail with accommodation requirements to a specified address in an island, providing for a bail hearing to be heard in private having regards to interests of the defendant and the public interest, for the publication of matters related to a bail hearing and for the receiving of evidence by the court, in clauses 5 to 15.

PART III

Part III of the Bill sets out the provisions for police to grant bail, for the police to issue notice of police bail, the conditions of police bail, the consequences of a failure to answer police bail, the consequences of the failure to surrender to custody or to observe a curfew in clauses 16 to 22.

PART IV

Part IV of the Bill provides for court bail by setting out provisions dealing with bail on adjournment, the conditions the court may attach in granting bail, the ability to impose the further condition of electronic monitoring, the variations the court may make in the conditions of bail, the ability of the court to impose a drug or alcohol condition in clauses 23 to 27.

PART V

Part V of the Bill makes provision for the court to impose electronic monitoring conditions on a defendant out on bail, by giving the court power to impose the electronic monitoring condition, to set out when the court may grant bail with an electronic monitoring condition, by providing the application process for bail with electronic monitoring condition, setting out the matters to be considered before granting bail with electronic monitoring condition, imposing the defendant's obligations under an electronic monitoring condition, setting out matters to be prescribed, establishing the Electronic Monitoring Department and providing for the appointment of a director and the functions of the director, giving power of entry to the Director, providing for delegations of functions by the Director, for the making of monitoring reports for electronic monitoring bail conditions, setting out the use to which information obtained from an electronic monitoring report can be put, setting out the use to which information from electronic monitoring can be put, the breach of bail conditions with electronic monitoring device, and the imposition of the offence of tampering with an electronic monitoring device in clauses 28 to 45.

PART VI

Part VI of the Bill provides for the testing and monitoring of defendants on bail with drug or alcohol conditions by providing for the testing or submission to continuous testing, for the forms of notice to be issued to undergo testing or to submit to continuous monitoring, to set out the places for prescribed testing, to provide the various ways in which the drug or alcohol condition may be breached, the use to which the information obtained from drug and alcohol testing or monitoring can be put in clauses 46 to 50.

PART VII

Part VII of the Bill sets out the various procedures after a defendant has been granted bail by providing that the release of a defendant shall be accompanied by a notice setting out the conditions of bail, by providing the qualification of a surety, the discharge of a surety, the variations of conditions of bail that may be made by the Magistrate Court, the variation in the conditions of bail that may be made by the Supreme Court, by setting out how a defendant may surrender on bail with an electronic monitoring condition, the circumstances in which a defendant on bail may be arrested without warrant, making it an offence where an authorised person is refused entry to an electronic monitoring address, by providing for the warrant of arrest of a defendant absconding or breaching bail conditions, the consequences for the failure of a defendant to answer bail, for the non-performance of a condition of bail to be certified and recorded, for the payment of bail money to the crown and for the return of money to a surety, power for the court to grant or suspend bail on the deferment of a sentence in clauses 51 to 63.

PART VIII

Part VIII of the Bill sets out provisions for appeals from decisions of a Magistrate relating to bail, the procedures relating to a Magistrate's appeal, the execution of a decision of the Supreme Court on appeal relating to bail from Magistrate Court, appeal from decision of Supreme Court relating to bail, procedure relating to appeal from Supreme Court, Court of Appeal may grant bail on appeal relating to bail, treatment of time arising from an Appeal to Court of Appeal to calculate of imprisonment in clauses 64 to 70.

PART IX

Part IX of the Bill provides for where the court may need to issue a warrant for detention in custody and for granting bail to a defendant in custody pending appeal to the Supreme Court and Court of Appeal in clauses 71 to 72.

PART X

Part X of the Bill addresses the various miscellaneous provisions by providing for offences, the amount of bail, powers of the court in relation to writ of habeas corpus not affected by the Ordinance, that bail for contempt not affected, the making of regulations, amendment of schedules, court rules relating to practice and

procedure of courts, the making of rules for drug and alcohol testing and monitoring, consequential amendments and savings in clauses 73 to 82.

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