I am pleased to advise this Honourable House that the long-awaited BAIL BILL has been tabled today. It was my expectation that this Bill would have been here sooner, but the review and turnaround at different stages of the process were longer than I reasonably anticipated. If the robust discussion generated during the review process before tabling is anything to go by, then I expect even greater discussion to follow.

**The Bill consists of 24 clauses and four (4) schedules**. While it is not my intention to open debate on it today, as time is required for members to read it fully and carefully, I should nonetheless like to highlight its main features, including the new provisions to which attention is to be paid.

I cannot overemphasize the need for careful reading of the provisions. Our tendency to talk about what we think the law is or should be, without reading and assessing what is actually drafted, has been quite unhelpful in debates on Bill before the Parliament.

**This Bill when passed, will repeal and replace the existing Bail Act, 2000**. There are two primary reasons for the re-write. Firstly, all statutes, enacted prior to the replacement of Chapter III of the Constitution of Jamaica with the new Charter of Fundamental Rights and Freedoms, 2011, must be reviewed- especially those which engage fundamentally guaranteed rights and freedoms, for compliance with said Charter. Secondly, while we have preserved the settled common law principles, the extent of the tidying-up and restructuring of the existing Act that was required, would have meant an amendment to practically every provision. The decision to replace the existing Act with a new one was thus considered fitting.

The Bill honours the entitlement to bail that is guaranteed at section 14 (4) of the Constitution, which provides that *‘any person awaiting trial and detained in custody shall be entitled to bail on reasonable conditions unless sufficient cause is shown for keeping him in custody”.* Our highest court has opined that “*it is not in dispute that the Constitution is given a generous and purposive interpretation and, in particular the provisions that enshrine fundamental rights should receive a generous and not literalist interpretation”:* ***Madehoo v State of Mauritius [2016] UKPC 30****.* Of equal guidance is the caution that ’*rejection of a narrower or legalistic interpretation cannot mean that [other] sections of [a] constitution can be construed as creating rights which they do not contain: Matadeen v Pointu [1999] 1 AC 98, at 117-118.*

**Section 14 (1) (f) of the Constitution of Jamaica** permits deprivation of liberty “*on reasonable grounds and in accordance with fair procedures established by law in circumstances of the arrest or detention of a person for the purpose of bringing him before the competent legal authority- on reasonable suspicion of his having committed an offence; or where it is reasonably necessary to prevent his committing an offence*.”

There have been too many examples of people languishing in custody, without charge or, trial within a reasonable time. In many cases involving serious crimes major difficulties are encountered in completing investigations or case files in a timely manner. We are very familiar in this jurisdiction with a culture of ‘*informa fi dead’*. This culture is still pervasive, and it results in serious injustice. Witnesses as often threatened and even murdered. Many who provide credible intelligence to the police are often reluctant to proceed further to enable the police to convert that intelligence to evidence. Sometimes, witnesses and immediate victims are themselves part and parcel of the criminality, resulting in varying levels of investigative complexity.

These documented peculiarities in our Jamaican society necessitate innovative responses, legislatively and otherwise.

**In Jamaica,** where we aspire for security and value our rights above all, there is no avoiding a balance between freedom and dignity, on the one hand, and security on the other. Human rights must not become a tool for denying security to the public and the state. A balance is required - a sensitive and difficult balance - between freedom and dignity of the individual, and national security and public safety. This synthesis between national security and individual freedom reflects the rich and fertile character of the principle of rule of law in particular and of democracy in general.

**The foundation of democracy** is a legislature elected freely and periodically by the people. We often forget this fundamental principle. Undermining the legislature undermines democracy. The legislature is elected by the people to enact laws for peace, order and good government. Its main role, therefore, is to enact statutes. These statutes are subject to judicial review of their constitutionality and judicial interpretation of their meaning. If the judiciary determines that a statute is unconstitutional, the matter returns to the legislature, which may enact a new statute that achieves the same fundamental purpose as the voided statue while adopting more proportionate means.

This process is a proper dialogue between the branches. It is not a dialogue that takes place at meetings between judges and legislators; it is one that takes place by each branch carrying out its constitutional role.

A person who is arrested or detained on reasonable grounds that he has committed an offence does not automatically move from arrest or detention to trial. He must go through a process with various stages along the way before he is tried. Having guaranteed an entitlement to bail, the question of bail must be considered once the liberty of the person is engaged on the basis that he is reasonably suspected of having committed an offence.

This leads me to the provisions of the new law:

**Stages at which bail may be granted**: pre-charge (in defined cases), post charge and post-conviction (in defined cases).

Pre-charge bail is the primary innovation in the law. It is intended to strike a proper balance to ensure that the aims of justice are not frustrated.

**Deciding Official** who may grant bail: Judge, Justice of the Peace (JP) and police who is neither the arresting officer nor an officer involved in the investigation of the offence and in case of bail before charge - by police at rank of Superintendent or above.

**Question of bail in relation to a child** is to be determined by Children’s Court in accordance with provisions of Child Care and Protection Act, with requirement that for parent or guardian who consents to being surety to ensure compliance with conditions of bail by child, until child attains age of majority - clause 3(2); (3); and (4).

**Grant of bail prior to charge for scheduled offences** (**Clause 5)** - with provision for appeal to Parish Judge in Chambers against any condition imposed.

Conditions that may be imposed when bail is granted by JP or police are defined, but greater latitude is given to the court to impose conditions as appear necessary (clause 5(9) and (10))

**Form of Notice is prescribed** in First Schedule for administrative ease

Judge to consider reasonableness of conditions imposed and may vary or revoke that would not impair investigation of the offence the defendant is reasonably suspected of committing (clause 5(12))

**Grant of bail after charge but prior to conviction (clause 6)**

Entitlement unless there is sufficient cause for holding defendant in custody (clause 6(1)(a).

Shall not be held for period longer than **48 hours** with bail being considered (up from 24 hours) (clause 6(1)(b).

Bail *shall* be granted to defendant charged with **offence not punishable with imprisonment** unless specified circumstances set out at clause 7(5) exist (clause 6(2)) - conduct of defendant on previous grants of bail; for own protection or welfare of child.

**Only judge** may determine question of bail where defendant is charge with scheduled **offences at Part 1 of Second Schedule** (clause 6(3)).

**Grant of bail after conviction in exceptional circumstances (clause 13)**

To defendantswho were **on bail prior to conviction** for offences other those scheduled at **Part 2 of Second Schedule** and who **appeals against conviction.**

**\*\*\*Circumstances in which bail may be denied (clause 7) (i); (j); (k)**

**Clause 7(2)** - Special provision in relation to defendants charged with offence of murder where self-defence does not arise or committed in circumstances amounting to capital murder or where offence is committed in ZOSO, area under SOPE or cordon established, or curfew imposed.

See **clause 7(3)** which sets out details to guide the court’s consideration, especially **clause 7(3)(i); (j) (k).**

**Conditions of bail (clause 8)** -to ensure defendants surrender to custody, does not commit offence while on bail or interfere with witnesses or otherwise obstruct course of justice in relation to self or other (see clause 7(1).

Some conditions may only be imposed by a court - clause 8(5)

Surrender of travel documents

Imposition of curfew

**\*Wearing of electronic bracelet** (new)

**Clause 9** -sets out general provisions relating to bail

Conditions imposed may be varied on application of defendant or prosecution/police (clause 9(2).

New application for bail may be made in defined circumstance - clause 9(3):

* Where there is a change in circumstances affecting the matter since previous application;
* Where applicable facts were unavailable or relevant facts exist.

**Bail to be revoked in defined circumstances**, including where defendant absconds, breaches condition of bail or commits offence while on bail - clause 9(4).

**\*\*All information re grants or refusal of bail to be recorded in prescribed form and disclosed to the defendant and prosecution (Clause 10)** (for greater protection of parties).

**Reasons to be given in prescribed form** to prosecution and defendant for refusal of bail and imposition or variation of conditions - clause 10(3) and (4).

Where bail defendant is unrepresented, he is to be informed of procedure for review of decisions to deny, impose or vary conditions or revoke bail - clause 10(5).

**Review of bail decisions (clause 11)**

Decisions of JP or police to be reviewed by Judge of Parish Court with jurisdiction to try offence on first appearance in court where there has been a change in circumstances affecting the matter, or where facts applicable to the matter were unavailable to deciding official when decision was made (clause 11)2))

**Judge to review fortnightly cases** involving defendants who were granted bail but were unable to take it up. **Police** officer in charge of lock-up or whomever is in charge of correctional institution **under statutory duty to supply list of those defendants** to the court at specified time (clause 11(3)).

**Appeal from decision of judge (clause 12)**

Appeal by defendant lies to:

Judge of Supreme Court in Chambers from decision of Parish Judge;

Judge of Court of Appeal in Chambers from decision of Judge of Supreme Court;

Appeal by prosecution lies to the Court of Appeal.

**\*\*\*Absconding by person on bail (clause 14)** is punishable on summary conviction before Parish Judge to imprisonment up to 5 years or before Circuit Court to imprisonment up to 7 years. Sentence is to run consecutively to sentence for offence for which he was on bail (if convicted).

**New provisions regard bail with surety (see clause 16- 20).**

The Bill is to be revied by a Joint Select Committee of the houses of Parliament.

I look forward to studied consideration of the provisions in the stages that follow leading up to passing of the bill into law.