

2024-03-19

OBJECTS AND REASONS

This Bill would amend the *Criminal Procedure Act*, Cap. 127 in order to enable an accused person to elect to be tried by a judge sitting alone.

Arrangement of Sections

1. Short title
2. Repeal and replacement of section 3 of Cap. 127
3. Amendment of section 7 of Cap. 127
4. Insertion of sections 7B, 7C, 7D and 7E into Cap. 127
5. Repeal and replacement of section 8 of Cap. 127
6. Amendment of section 9 of Cap. 127
7. Repeal and replacement of section 9A of Cap. 127
8. Amendment of section 10 of Cap. 127
9. Insertion of Schedule into Cap. 127
10. Amendment to enactments

FIRST SCHEDULE

Form A

SECOND SCHEDULE

Consequential Amendments

BARBADOS

A Bill entitled

An Act to amend the *Criminal Procedure Act*, Cap. 127 in order to enable an accused person to opt to elect to be tried by a judge sitting alone.

ENACTED by the Parliament of Barbados as follows:

Short title

1. This Act may be cited as the *Criminal Procedure (Amendment) Act, 2024*.

Repeal and replacement of section 3 of Cap. 127

2. *The Criminal Procedure Act, Cap. 127 in this Act referred to as the principal Act, is amended by deleting section 3 and substituting the following:*

“Mode of trial

3. Every person against whom a bill of indictment has been preferred shall, subject to the provisions of this Act, be tried by a Judge sitting with a jury unless he elects to be tried by a Judge sitting alone.”.

Amendment of section 7 of Cap. 127

3. *Section 7 of the principal Act is amended by deleting subsection (1) and substituting the following:*

“(1) The judge shall, if a person arraigned on indictment pleads “not guilty”, inform the person that he may elect to be tried by a Judge sitting alone or a Judge sitting with a jury.

(1A) Where the person referred to in subsection (1) upon being arraigned, elects to be tried by a Judge sitting alone, the court shall only make an order that the person be tried by a judge sitting alone if it is satisfied that the person

- (a) has sought and received legal advice from an attorney-at-law in relation to a trial by a Judge sitting alone; and

(b) has filed with the Registrar of the Supreme Court a certificate in the form set out as Form A in the *First Schedule*.

(1B) Where a person is not represented by an attorney-at-law and elects to be tried by a Judge sitting alone, the Court shall make an order that the person be tried by a Judge sitting alone if it is satisfied that the person

(a) is competent and has waived his right to consult an attorney-at-law for legal advice in relation to a trial by a Judge sitting alone; and

(b) has filed with the Registrar of the Supreme Court a certificate in the form set out as Form B in the *First Schedule*.

(1C) The Court shall not make an order for a trial by a Judge sitting alone unless it is satisfied that

(a) in the case of a joint trial, all other accused persons have elected to be tried by a Judge sitting alone and each accused person has filed a certificate in the form set out as Form A or B in the *First Schedule*, as the case may be, in accordance with subsection (1A) or (1B); and

(b) where 2 or more charges are to be tried together, the accused person has elected to be tried by a Judge sitting alone in respect of all the charges.

(1D) Subject to subsection (1E), where the first hearing after the filing of an indictment against an accused person took place before the commencement of this section

(a) the Registrar of the Supreme Court shall cause to be served on the accused person, a notice informing him that he may, at least 60 days before the date fixed for his trial, apply to the Court for a trial by a Judge sitting alone; and

(b) the person may apply to the Court for a trial by a Judge sitting alone.

(1E) The Court shall not proceed to try the person by a Judge sitting alone unless it is satisfied that the accused person understands the difference between a trial by a Judge sitting alone and a trial by a Judge sitting with a jury.

(1F) The Court shall not proceed to trial by a Judge sitting alone

(a) if there are 2 or more accused, unless all accused have elected to be tried by a Judge sitting alone; and

(b) if there are 2 or more charges in the indictment unless the accused has elected to be tried by a Judge sitting alone in respect of all charges.

(1G) An accused who has elected for trial by a Judge sitting alone may withdraw his election before his trial begins and elect to be tried by a Judge sitting with a jury.”.

Insertion of sections 7B, 7C, 7D and 7E into Cap. 127

4. *The principal Act is amended by inserting immediately after section 7A, the following new sections:*

“Jurisdiction of the Judge

7B. In a trial by a Judge sitting alone, the Judge shall have

(a) the power, authority and jurisdiction which he would have had in a trial by jury; and

(b) the power to determine any question and to make any finding which would have been required to be determined or made by a jury.

References to jury in other enactments

7C.(1) A reference in this Act or in any other enactment to a jury, the verdict of a jury or the finding of a jury shall be read, in relation to a trial by a Judge sitting alone, as a reference to the Judge, the verdict of the Judge or the finding of the Judge, as the case may be.

(2) For the purposes of a trial by a Judge sitting alone, the provisions of this Act or any other enactment, insofar as they are predicated on a trial by a Judge sitting with a jury, shall be read and construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with a trial by a Judge sitting alone.

Judge to give reasons for decision

7D.(1) When the case on both sides is closed in a trial by a Judge sitting alone, the Judge shall, as soon as reasonably practicable and in any event before the expiration of 14 days, deliver his verdict and, in the case of a conviction, he shall give a written judgment setting out

- (a) the principles of law applied by the Judge; and
- (b) the findings of fact on which the Judge relied.

(2) If any other law requires a warning to be given to a jury in any such case, the Judge sitting alone shall take the warning into account in dealing with the case.

(3) Subject to subsection (4), where an accused person is acquitted in a trial by a Judge sitting alone, the Judge may give reasons for his verdict.

(4) Where the prosecution requests reasons for an acquittal, the Judge shall give reasons within 14 days of that request.

(5) Where a Judge fails to deliver his judgment or give reasons for an acquittal within the period specified in subsection (1) or (4), as the case may be, he shall convene the Court and inform the parties of the further time required for completion.

Right of accused to elect to be tried by Judge alone

7E. An accused person against whom an indictment was preferred before the commencement of this section may elect to be tried by a Judge sitting alone.

Person indicted for high treason or treason

7F. A person indicted for high treason or treason is not entitled to elect to be tried by a Judge sitting alone.”.

Repeal and replacement of section 8 of Cap. 127

5. *Section 8 of the principal Act is deleted and the following is substituted:*

“Addressing the jury or judge sitting alone

8. Upon every trial on indictment for an offence, whether the prisoners or defendants or any of them are defended by an attorney-at-law or not, each and every such prisoner or defendant, or his or their attorney-at-law respectively, may, before addressing the jury or the Judge, as the case may be, at his discretion, elect to examine such witnesses as he or they may think fit and, when all the evidence is concluded, to address the jury or the Judge, and the right of reply and practice and course of proceedings, save as hereby altered, shall be as at present.”.

Amendment of section 9 of Cap. 127**6. Section 9 of the principal Act is amended by deleting****(a) subsection (1) and substituting the following:**

“(1) Where, upon the trial of any indictment for any arrestable offence, except murder or manslaughter, the indictment alleges that the defendant did wound any person and the jury are, or the judge is, satisfied that the defendant is guilty of the wounding charged in such indictment but not satisfied that the defendant is guilty of the arrestable offence charged in such indictment, then and in every such case the jury or the Judge may acquit the defendant of such arrestable offence and find him guilty of unlawfully wounding and thereupon such defendant shall be liable to be punished in the same manner as if he had been convicted upon an indictment for the offence of unlawfully wounding.”; and

(b) subsection (3) and substituting the following:

“(3) Where, upon the trial of any person charged with any offence, it appears to the jury or the Judge, as the case may be, upon the evidence that the defendant did not complete the offence charged but that he was guilty only of an attempt to commit the same, such person shall not by reason thereof be entitled to be acquitted but the jury or the Judge shall be at liberty to return as the verdict that the defendant is not guilty of the offence charged but is guilty of an attempt to commit the same, and thereupon such person shall be liable to be punished in the same manner as if he had been convicted upon an indictment for attempting to commit the particular offence charged in the same indictment.”.

Repeal and replacement of section 9A of Cap. 127

7. *The principal Act is amended by deleting subsection 9A and substituting the following:*

“Special verdict where accused person found guilty, but insane at date of act charged

9A. Where, in an indictment, any act is charged against any person as an offence, and it is given in evidence on the trial of such person for that offence that he was insane, so as not to be responsible according to law for his actions at the time when the act was done, then, if it appears to the jury or the Judge, as the case may be, before whom such person is tried that he did the act charged, but was insane when he did the act, the jury or the Judge, shall return a special verdict to the effect that the accused person is not guilty of the act charged against him, by reason of insanity.”.

Amendment of section 10 of Cap. 127

8. *Section 10 of the principal Act is amended by inserting immediately after subsection (2) the following:*

“(3) Subsection (1) does not apply to a trial by a Judge sitting alone.”.

Insertion of Schedule into Cap. 127

9. *The principal Act is amended by inserting as the Schedule to the principal Act, the Schedule as set out in the First Schedule to this Act.*

Amendment to enactments

10. *The enactments set out in Column 1 of the Second Schedule are amended in the manner set out opposite thereto in Column 2.*

FIRST SCHEDULE

(Section 9)

"SCHEDULE

(Section 7(1A) and (1B))



FORM A

No.

IN THE SUPREME COURT OF JUDICATURE

HIGH COURT

(Criminal Division)

BETWEEN:

The State

v

A.B

CERTIFICATE OF WAIVER OF LEGAL ADVICE ON ELECTING FOR A TRIAL BY
JUDGE SITTING ALONE

I, _____, confirm that I have sought and received advice from the
(Name of Accused Person)

undersigned Attorney-at-law on electing to be tried by a Judge sitting alone. The undersigned Attorney-at-law has advised me of my rights, of possible defences, of the penalties and of the consequences and the implications of electing to be tried by a Judge sitting alone. I have had sufficient time to confer with the undersigned Attorney-at-law concerning this mode of trial.

First Schedule - (Cont'd)

I understand the implications of electing to be tried by a Judge sitting alone and agree to this mode of trial without reservation. No promise, inducement, threat, coercion or force of any kind was employed to secure my election of this mode of trial. I voluntarily and of my free will agree to it.

Dated this _____ day of _____, 20__.

Name of Accused Person

Name of Attorney-at-Law

Signature of Accused Person

Signature of Attorney-at-Law

First Schedule - (Concl'd)



FORM B

No.

IN THE SUPREME COURT OF JUDICATURE
HIGH COURT
(Criminal Division)

BETWEEN:

The State

v

A.B

CERTIFICATE OF CONFIRMATION OF LEGAL ADVICE ON ELECTING FOR A
TRIAL BY JUDGE SITTING ALONE

I, _____, confirm that I have not sought and received advice from
(Name of Accused Person)

any Attorney-at-law on the matter of me electing to be tried by a Judge sitting alone. I have waived my right to consult an Attorney-at-law for legal advice in relation to a trial by a Judge sitting alone. I elect to be tried by a Judge sitting alone and agree to it without reservation. No promise, inducement, threat, coercion or force of any kind was employed to secure my election of this mode of trial. I voluntarily and of my free will agree to it. I am satisfied with representing myself in this matter.

Dated this _____ day of _____, 20__.

Name of Accused Person

Signature of Accused Person".

SECOND SCHEDULE*(Section 6)*

CONSEQUENTIAL AMENDMENTS

Column 1	Column 2
<i>Enactments</i>	<i>Amendments</i>
1. <i>Criminal Appeal Act, Cap. 113A</i>	<ol style="list-style-type: none"> 1. In section 4(1)(a), immediately after the word "jury" insert the words "or Judge, as the case may be." 2. In section 5, immediately after the word "jury" wherever it appears insert the words "or Judge". 3. Delete section 7 and substitute the following: <p style="text-align: center;">"Conviction on special verdict</p> <p style="text-align: center;">7. Where a special verdict had been found by a jury or a judge, then on an appeal against conviction, if the Court considers that a wrong conclusion was arrived at by the court of trial regarding the effect of the verdict, the Court may, instead of allowing the appeal, order such conclusion to be recorded as appears to the Court to be in law required by the verdict; and the Court may pass such sentence in substitution for the sentence passed at the trial as may be authorized by law."</p> 4. In section 9(1), immediately after the word "jury" insert the words "or judge". 5. In section 10(1), immediately after the word "jury" appearing in paragraphs (a) and (b) insert the words "or judge".

Second Schedule - (Cont'd)

CONSEQUENTIAL AMENDMENTS - (Cont'd)

Column 1	Column 2
<i>Enactments</i>	<i>Amendments</i>
1. <i>Criminal Appeal Act</i> , Cap. 113A - (Concl'd)	<p>6. In section 10(3), immediately after the word "jury" insert the words "or judge".</p> <p>7. Delete section 12(1) and substitute the following:</p> <p style="padding-left: 40px;">"(1) Where the question of a person's fitness to be tried is to be determined and the jury has returned, or the judge has made a finding of unfitness, the person may appeal to the Court against the finding."</p> <p>8. In section 13(1)(a), immediately after the word "jury" insert the words "or judge".</p> <p>9. Delete section 15(2)(c) and substitute the following:</p> <p style="padding-left: 40px;">"(c) an offence charged in an alternative count of the indictment in respect of which the jury were discharged from giving or the judge declined to give a verdict in consequence of convicting him of the offence of which he was convicted at the original trial."</p> <p>10. In section 17(1), immediately after the word "jury" insert the word "or judge".</p>
2. <i>Evidence Act</i> , Cap. 121	<p>1. Delete section 102(4) and substitute the following:</p> <p style="padding-left: 40px;">"(4) Where</p> <p style="padding-left: 80px;">(a) it is not reasonably open to find the accused guilty on the basis of identification evidence;</p>

Second Schedule - (Cont'd)

CONSEQUENTIAL AMENDMENTS - (Cont'd)

Column 1	Column 2
<i>Enactments</i>	<i>Amendments</i>
2. <i>Evidence Act</i> , Cap. 121 - (Cont'd)	<p>(b) there are no special circumstances of the kind mentioned in subsection (2)(a); and</p> <p>(c) there is no evidence of the kind mentioned in subsection (2)(b)</p> <p>if there is a jury, the Judge shall direct the jury to acquit the accused or if the Judge is sitting alone, he shall acquit the accused."</p>
3. <i>Offences Against the Person Act</i> , Cap. 141	<p>1. Delete section 4(6) and substitute the following:</p> <p>"(6) Where on a trial for murder</p> <p>(a) evidence is given that the accused was, at the time of the alleged offence, suffering from such abnormality of mind as is specified in subsection (1); and</p> <p>(b) the accused is convicted of manslaughter,</p> <p>the court shall, if there is a jury, require the jury to declare whether the accused was so convicted by them on the ground of such abnormality of mind, and, if the conviction was on that ground, the court may instead of passing sentence as is provided by law for that offence, order the person so convicted to be detained in custody in such place as the Court appoints, until the State's pleasure is known and thereupon the State may give such order for the safe custody of the person during the State's pleasure."</p>

Second Schedule - (Cont'd)

CONSEQUENTIAL AMENDMENTS - (Cont'd)

Column 1	Column 2
<i>Enactments</i>	<i>Amendments</i>
3. <i>Offences Against the Person Act</i> , Cap. 141 - (Cont'd)	<p>2. Delete section 5 and substitute the following:</p> <p style="text-align: center;">"Provocation</p> <p>5. Where on a charge of murder there is evidence on which the judge or jury, as the case may be, can find that the accused was provoked, whether by things done or by things said or by both together, to lose his self-control, the question whether the provocation was enough to make a reasonable man do as he did shall be left to be determined by the judge or jury; and in determining that question, the judge or jury shall take into account everything both done and said according to the effect which, in his or their opinion as the case may be, it would have on a reasonable man."</p> <p>3. Delete section 46 and substitute the following:</p> <p style="text-align: center;">"Alternative verdicts</p> <p>46. (1) If on the trial of an indictment for murder or manslaughter the jury are or the Judge is of the opinion that the accused aided, abetted, counselled or procured the suicide of the person in question, the jury or the Judge may find him guilty of that offence.</p> <p>(2) Where on the trial of a woman for the murder of her newly-born child the jury are or the Judge is of the opinion that she by any wilful act or omission caused its death, but at the time of the act or omission the balance of her mind was disturbed by reason of her not having fully recovered from</p>

Second Schedule - (Cont'd)

CONSEQUENTIAL AMENDMENTS - (Cont'd)

Column 1	Column 2
<i>Enactments</i>	<i>Amendments</i>
<p>3. <i>Offences Against the Person Act</i>, Cap. 141 - (Concl'd)</p>	<p>the effect of giving birth to the child or by reason of the effect of lactation consequent on the birth of the child, the jury or the judge may return a verdict of infanticide.</p> <p>(3) Where any person tried for the murder of any child is acquitted thereof, it shall be lawful for the jury or the Judge by whose verdict such person is acquitted to find, where it so appears in evidence, that the child had recently been born and that such person did, by some secret disposition of the dead body of such child, endeavour to conceal the birth thereof, and thereupon the court may pass such sentence as if such person had been convicted upon an indictment for the concealment of the birth."</p>
<p>4. <i>Sexual Offences Act</i>, Cap. 154</p>	<p>1. Delete section 24(1) and substitute the following:</p> <p>"(1) Where at a trial for an offence under this Act the jury, if there is a jury has to consider whether a person believed that another was consenting to sexual intercourse or to any other sexual act, the Judge shall direct the jury that the presence or absence of reasonable grounds for such a belief, is a matter to which the jury is to have regard, in conjunction with any other relevant matter, in considering whether that person so believed."</p> <p>2. In subsections (1) and (2) of section 36 immediately after the word "jury" wherever it appears insert the words "or Judge".</p>

Second Schedule - (Concl'd)

CONSEQUENTIAL AMENDMENTS - (Concl'd)

Column 1	Column 2
<i>Enactments</i>	<i>Amendments</i>
5. <i>Theft Act, Cap. 155</i>	<p>1. Delete section 22(2) and substitute the following:</p> <p style="padding-left: 40px;">"(2) Where on a trial of an indictment for theft, the jury or the Judge is not satisfied that the accused committed the theft, but it is proved to the satisfaction of the jury or the Judge that the accused committed an offence under subsection (1), the jury or the Judge may find the accused guilty of that offence."</p> <p>2. Delete section 30(2) and substitute the following:</p> <p style="padding-left: 40px;">"(2) On the trial of 2 or more persons indicted for jointly handling any stolen property the jury or the Judge may find any of the accused guilty if the jury or the Judge is satisfied that he handled all or any part of the stolen property, whether or not he did so jointly with the other accused or any of them."</p>