

2018-08-08

OBJECTS AND REASONS

This Bill would make provision for the repeal of the mandatory imposition of the penalty of death for the offence of murder under section 2 of the *Offences Against the Person Act*, Cap. 141 and other matters related thereto.

Arrangement of Sections

1. Short title
2. Amendment of section 2 of Cap. 141
3. Insertion of section 2A into Cap. 141

BARBADOS

A Bill entitled

An Act to amend the *Offences Against the Person Act*, Cap. 141.

ENACTED by the Parliament of Barbados as follows:

Short title

- 1.** This Act may be cited as the *Offences Against the Person (Amendment) Act, 2018*.

Amendment of section 2 of Cap. 141

2. *The Offences Against the Person Act, Cap. 141, in this Act referred to as the principal Act, is amended by deleting section 2 and substituting the following:*

“Punishment for murder

2.(1) A person who commits the offence of murder may be liable on conviction on indictment to

- (a) suffer death; or
- (b) imprisonment for life.

(2) A Court may sentence a person convicted of murder to death where

- (a) the murder was committed with a high level of brutality, cruelty, depravity, or callousness;
- (b) the murder involved calculated or lengthy planning;
- (c) the deceased was a Judge, a Magistrate, the Director of Public Prosecutions or a legal officer in the Department of Public Prosecutions and the office of the deceased was a factor in the commission of the offence;
- (d) the deceased was a member of the Royal Barbados Police Force, a member of the Barbados Defence Force, a member of the Special Constabulary or a prison officer and the office of the deceased was a factor in the commission of the offence;
- (e) the deceased was a member of a group of persons who have a common characteristic such as race, nationality, ethnicity or religion and this was a factor in the commission of the offence;

- (f) the deceased was a witness or a juror in a pending or concluded trial and this was a factor in the commission of the offence;
- (g) the deceased was particularly vulnerable because of his age, health or disability or because of any other factor;
- (h) the person convicted was convicted of 2 or more offences of murder, whether or not arising from the same circumstances; or
- (i) in the opinion of the Court, there are any other exceptional circumstances which must be taken into account and which justify the imposition of a sentence of death.

(3) Where the Court sentences a person to death and the sentence of death is not executed within a period of 5 years from the date of the sentence, the sentence shall be commuted by order of the Court, to a sentence of imprisonment that the Court shall specify having regard to the guidelines set out in sections 39 and 41 of the *Penal System Reform Act, Cap. 139*.

(4) Where the Court sentences a person convicted of murder specifically to imprisonment for life, the Court shall specify a minimum term of imprisonment to be served by the convicted person before becoming eligible for the grant of a release order.

(5) In determining the appropriate minimum term of imprisonment pursuant subsection (4), the Court shall have regard to the guidelines set out in sections 39 and 41 of the *Penal System Reform Act, Cap. 139*.

(6) Where the Court, in sentencing a person convicted of murder, does not impose the sentence of imprisonment for life, the Court shall impose a term of imprisonment having regard to the guidelines set out in sections 39 and 41 of the *Penal System Reform Act, Cap. 139*.

(7) In this section the term "release order" has the meaning assigned to it by section 2 of the *Prisons Act*, Cap. 168.”.

Insertion of section 2A into Cap. 141

3.*The principal Act is amended by inserting immediately after section 2, the following section:*

“Review of existing sentences for the offence of murder

2A.(1) A person who, prior to the commencement of the amendments contained in the *Offences Against the Person (Amendment) Act, 2018*, (Act 2018-), was convicted of murder and sentenced to death and

(a) whose sentence was not commuted under section 78 of the *Constitution* shall have

(i) his sentence set aside by the Chief Justice; and

(ii) a new sentence imposed by the Chief Justice in accordance with section 2; and

(b) whose sentence was commuted under section 78 of the *Constitution* shall have

(i) his sentence and the instrument by which the sentence was commuted, set aside; and

(ii) a new sentence imposed by the Chief Justice in accordance with section 2.

(2) Notwithstanding subsection (1), the sentence of death shall not be imposed on a person whose sentence is reviewed pursuant to subsection (1).

(3) The Chief Justice shall, in imposing a new sentence under subsection (1), take into consideration the guidelines set out in sections 39 and 41 of the *Penal System Reform Act, Cap. 139.*”.

Read three times and passed the House of Assembly this
day of _____, 2018.

Speaker

Read three times and passed the Senate this _____ day of
, 2018.

President

OFFENCES AGAINST THE PERSON (AMENDMENT) BILL, 2018

EXPLANATORY MEMORANDUM

The *Offences Against the Person (Amendment) Bill, 2018* would make provision for the repeal of the mandatory imposition of the penalty of death for the offence of murder under section 2 of the *Offences Against the Person Act, Cap. 141* and other matters related thereto.

Clause 1: Clause 1 of the Bill states that the Act may be cited as the *Offences Against the Person (Amendment) Act, 2018*.

Clause 2: Clause 2 of the Bill deletes section 2 of the *Offences Against the Person Act, Cap. 141* and substitutes it with a new section 2. The proposed section 2 provides as follows:

Section 2 of the Bill seeks to abolish the mandatory imposition of the death penalty by expanding the sentencing options available to the Court for the offence of murder pursuant to the decision in the case of *Severin and Nervais v The Queen* [2018] CCJ 19 (AJ).

The Cabinet has made it clear that the death penalty should be retained as a punishment for the offence of murder. Accordingly section 2(1) (a) of the Bill makes provision for retention of the death penalty as a punishment for the offence of murder.

Section 2(1)(b) provides that a person convicted on indictment for murder may also be liable to a sentence of imprisonment for life. The language employed in terms of making a person convicted on indictment for murder *liable to imprisonment for life* should be interpreted in accordance with section 22(5) of the *Interpretation Act, Cap 1*. This means that the sentence of imprisonment for life is to be interpreted as the maximum sentence of imprisonment that can be imposed by a Court on a person convicted of the offence of murder. In other words, the Court may, in its discretion, impose a sentence of

imprisonment of zero years to imprisonment for life but the Court cannot impose a term exceeding a term of imprisonment for life. The said wording allows a Court to tailor the punishment to take into account the particular characteristics of the crime and the participation and degree of culpability of the defendant.

Section 2(2) sets out the circumstances in which the Court may impose the death penalty on a person convicted of the offence of murder.

Section 2(3) takes into consideration the decision in *Pratt v. Morgan* [1993] 4 All E.R. 769. Thus, section 2(3) requires that where the Court sentences a person to death, that sentence must be executed within a five year period or risk being in breach of section 15 of the *Constitution* which seeks to protect a person from being subject to torture or to inhuman or degrading punishment or other treatment. Where the sentence is not executed before the expiration of the said time, the sentence must be commuted to a punishment to be determined by the Court having regard to the guidelines set out in sections 39 and 41 of the *Penal System Reform Act, Cap. 139*.

Section 2(4) enables the Court to impose a sentence of imprisonment for life on a person convicted of the offence of murder. The Caribbean Court of Justice has indicated in the case of *August & Alwin Gabb v. The Queen* [2018] CCJ 7 (AJ) that a sentence for imprisonment for life should not prohibit the possibility for parole. If the provision does so it is unconstitutional. Considering the aforementioned, the proposed section 2(3) provides for the imposition of a sentence of imprisonment for life on a person convicted of the offence of murder with the Court being empowered to set a minimum period of imprisonment before the person convicted of the offence of murder can become eligible for the grant of a release order. Provision has been made in the *Prisons Act, Cap. 168* for the establishment of an entity to be known as the “Prisoners Release Board” which is given the appropriate judicial powers to grant release orders.

Section 2(5) states that where the Court is determining the minimum period of imprisonment in relation to the imposition of the sentence of imprisonment for life, the Court shall take into account the guidelines set out in sections 39 and 41 of the *Penal System Reform Act, Cap. 139*.

Bearing in mind that the language in section 2(1)(b) expresses the maximum sentence of imprisonment that can be imposed on a person convicted for murder, section 2(6) provides that where the Court, in sentencing a person convicted of murder, does not impose the sentence of imprisonment for life, the Court shall impose a term of imprisonment which takes into account the guidelines set out in sections 39 and 41 of the *Penal System Reform Act, Cap. 139*.

Section 2(7) provides that the term “release order” should be assigned the meaning accorded to it by section 2 of the *Prisons Act, Cap. 168*.

Clause 3: Clause 3 of the Bill inserts a new section 2A into the *Offences Against the Persons Act, Cap. 141* in order to address the re-sentencing of certain persons. The explanation of the subsections in the new section 2A is set out as follows:

Section 2A (1) (a) seeks to address persons who have already been sentenced under the current *Offences Against the Persons Act, Cap. 141*. The persons who were sentenced already must be re-sentenced because the original sentences have been deemed to be unconstitutional by the Inter-American Court of Human Rights in *Case 12.645: Tyrone Dacosta Cadagon v. Barbados*.

Section 2A (1)(b) seeks to address persons who have been pardoned by the Governor-General pursuant to section 78 of the *Constitution*. The persons who were pardoned must have their punishments reviewed because their sentence was commuted in response to the fact that Barbados did not have discretion to impose a punishment other than

the death penalty. The aforementioned constitutes an abuse of the prerogative of mercy set out in section 78 of the *Constitution*.

Section 2A (2) makes it clear that in reviewing the sentences of persons specified in subsection (1) of section 2A, the sentence of death cannot be imposed.

Section 2A(3) states that the guidelines that should inform the re-sentencing of persons pursuant to subsection (1) are those guidelines set out in sections 39 and 41 of the *Penal System Reform Act, Cap. 139*.