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**OFFICIAL GAZETTE**  
**THE BAHAMAS**  
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No. 34 of 2011



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## PENAL CODE (AMENDMENT) ACT, 2011

AN ACT TO AMEND THE PENAL CODE TO SET OUT THE  
CIRCUMSTANCES THAT WILL ATTRACT THE DEATH PENALTY  
OR LIFE IMPRISONMENT OF A PERSON CONVICTED OF MURDER

(Date of Assent – 3<sup>rd</sup> November, 2011)

Enacted by the Parliament of The Bahamas

**1. Short title.**

This Act, which amends the Penal Code (*Ch. 84*), may be cited as the Penal Code (Amendment) Act, 2011.

**2. Amendment of section 290 of the principal Act.**

Section 290 of the principal Act is amended by the renumbering of the section as subsection (1) of section 290 and by the insertion immediately thereafter of the following as subsections (2) through (4) —

“(2) Every person who is convicted of murder committed in any of the following circumstances shall be sentenced in accordance with section 291(1), that is to say —

(a) the murder of —

- (i) a member of a disciplined force acting in execution of his duties or of a person assisting a member so acting;
- (ii) a judicial officer acting in the execution of his duties or of a person assisting a judicial officer so acting; or
- (iii) any person acting pursuant to powers, authorities and privileges as are given to members of the Royal Bahamas Police Force under the provisions of any law in force for the time being;

- (b) the murder of any person for any reason attributable to —
    - (i) the status of that person as a witness or party in a pending or concluded civil cause or matter or in any criminal proceedings; or
    - (ii) the service or past service of that person as a juror in any criminal trial;
  - (c) any murder committed by a person in the course of or furtherance of—
    - (i) robbery;
    - (ii) rape;
    - (iii) kidnapping;
    - (iv) terrorism,  
and any other felony.
  - (d) the murder of more than one person;
  - (e) any murder committed by a person who before that murder had been previously convicted of another murder done on a different occasion anywhere within or outside of The Bahamas;
  - (f) any murder committed pursuant to an arrangement whereby money or anything of value —
    - (i) passes or is intended to pass from one person to another or to a third party at the request or direction of that other person; or
    - (ii) is promised by one person to another or to a third person at the request or direction of that other person,  
as consideration for that other person causing or assisting in causing the death of any person or counselling or procuring any person to do any act causing or assisting in causing that death.
- (3) If in the course of any murder referred to in subsection (2)(a) to (f) two or more persons are convicted, the provisions of section 291 (1) shall apply to each person who either by his own act caused the death of the person, or who did some act in furtherance of a joint enterprise between him and the other person to cause the death of the person.
- (4) In this section —  
“disciplined force” has the same meaning as in Article 31 of the Constitution;  
“judicial officer” means —

- (a) a Justice of Appeal of the Court of Appeal or a Justice of the Supreme Court or any person for the time being performing the functions of a Justice of Appeal or a Justice of the Supreme Court;
- (b) the Registrar or Deputy Registrar of the Court of Appeal or of the Supreme Court or any person for the time being performing the functions of Registrar or Deputy Registrar;
- (c) a Magistrate or any person for the time being performing the functions of a Magistrate;
- (d) a counsel and attorney employed in the Office of the Attorney-General or of the Department of Public Prosecutions or any person for the time being performing the functions of the Attorney-General or of the Director of Public Prosecutions.”.

**3. Repeal and replacement of section 291 of the principal Act.**

Section 291 of the principal Act is repealed and replaced by the following—

**“291. Sentence for murder.**

- (1) Notwithstanding any other law to the contrary—
  - (a) every person who is convicted of murder falling within section 290(2)(a) to (f) shall be sentenced to death or to imprisonment for life;
  - (b) every person convicted of murder to whom paragraph (a) does not apply—
    - (i) shall be sentenced to imprisonment for life; or
    - (ii) shall be sentenced to such other term given the circumstances of the offence or the offender as the court considers appropriate being within the range of thirty to sixty years imprisonment:

provided that where a person under eighteen years of age is convicted of murder he shall not be sentenced in accordance with this subsection but instead subsection (4) shall apply to the sentencing of such person.
- (2) A person shall not be sentenced to death under this section by reason of a previous conviction for murder referred to in section 290 (2)(e) unless—
  - (a) at least seven days before the trial, notice is given to him that it is intended to prove the previous conviction; and
  - (b) before he is sentenced, his previous conviction for murder is admitted by him or is found to be proven by the trial Judge.

- (3) Before sentencing a person under subsection (1), the court shall hear submissions, representations and evidence, from the prosecution and the defence, in relation to the issue of the sentence to be passed.
- (4) A person who, in the opinion of the court, was at the time when the murder was committed under eighteen years of age shall be sentenced to be detained during the court's pleasure and shall be liable to be detained, subject to subsection (5), in such place and under such conditions as the Court may direct, and whilst so detained shall be deemed to be in legal custody.
- (5) A sentence of detention imposed in accordance with subsection (4) shall during its currency be reviewed by a judge in the first instance upon the expiration of twenty years and thereafter every five years with a view as to whether the detention should be maintained or discontinued having regard to the reported conduct of the offender during his detention and for that purpose the Registrar of the court shall cause the offender to be brought before a judge.
- (6) In this Code "imprisonment for life" means imprisonment for the whole of the remaining years of a convicted person's life.

**4. Amendment of section 339 of the principal Act.**

Subsection (2) of section 339 of the principal Act is amended by the deletion of the words "for twenty years" and by the substitution therefor of the words "within the range of fifteen to twenty-five years".