

THE OFFENCES AGAINST THE PERSON ACT

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46. { [*Repealed by Act 12 of 2009.*] }
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- 50. {
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- 61. { [Repealed by Act 12 of 2009.] }
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*OFFENCES AGAINST THE PERSON**Unnatural Offences*

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THE OFFENCES AGAINST THE
PERSON ACT

Cap. 268.	Sch.,
Laws	34 of 1973,
43 of 1958,	1 of 1979
15 of 1962	1st Sch.,
S. 35,	30 of 1988,
Sch.	14 of 1992,
Acts	31 of 1995
42 of 1963	S. 4,
[1864.] S. 2.	1 of 2005,
33 of 1967,	3 of 2006,
44 of 1968,	12 of 2009
42 of 1969	S. 42.
3rd Sch.,	18 of 2010,
9 of 1972	3 of 2014
	3rd. Sch.

1. This Act may be cited as the Offences against the Person Act. Short title

Homicide

2.—(1) Subject to subsection (3), every person to whom section 3(1A) applies or who is convicted of murder committed in any of the following circumstances shall be sentenced in accordance with section 3(1)(a), that is to say— Murder
14/1992
S 2
1/2005
S 2(a)(b)

(a) any murder— 3/2006
S 2(a)

(i) committed by a person if, in the course or furtherance of, arising out of, or ancillary to, that murder, the person commits an offence referred to in subsection (1A); or

(ii) committed by a person in the course or furtherance of, arising out of, or ancillary to, an offence referred to in subsection (1A),

whether or not the individual murdered was an individual that the offender intended to murder in committing the offence;

(b) the murder of—

(i) a member of the security forces acting in the execution of his duties or of a person assisting a member so acting;

- (ii) a correctional officer acting in the execution of his duties or of a person assisting a correctional officer so acting;
 - (iii) a judicial officer acting in the execution of his duties; or
 - (iv) any person acting in the execution of his duties, being a person who, for the purpose of carrying out those duties, is vested under the provisions of any law in force for the time being with the same powers, authorities and privileges as are given by law to members of the Jamaica Constabulary Force,
- or the murder of any such member of the security forces, correctional officer, judicial officer or person for any reason directly attributable to the nature of his occupation;
- (c) the murder of any person for any reason directly 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;
- (d) the murder of a Justice of the Peace acting in the execution of his judicial functions;
- (e) 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;

- (f) any murder committed by a person in the course or furtherance of an act involving the use of violence by that person which, by reason of its nature and extent, is calculated to create a state of fear in the public or any section of the public.

(1A) For the purposes of subsection (1)(a), the offences referred to in this subsection are— 3/2006
S.2(b).

- (a) burglary or housebreaking;
- (b) arson in relation to a dwelling house;
- (c) robbery; or
- (d) any sexual offence.

(2) Subject to subsection (3), every person convicted of murder other than a person— 1/2005
S. 2(c).

- (a) convicted of murder in the circumstances specified in subsection (1)(a) to (f); or
- (b) to whom section 3(1A) applies,

shall be sentenced in accordance with section 3(1)(b).

(3) If in the case of any murder referred to in subsection (1) (not being a murder referred to in paragraph (e) of that subsection), two or more persons are convicted of that murder— 1/2005
S. 2(c).

- (a) the provisions of section 3(1)(a) shall apply to any of those persons who—
 - (i) by his own act caused the death of, or inflicted or attempted to inflict grievous bodily harm on, the person murdered; or
 - (ii) himself used violence on that person in the course or furtherance of an attack on that person; and

(b) any other persons convicted of the murder shall be sentenced in accordance with section 3(1)(b).

(4) [*Deleted by Act 1 of 2005.*]

(5) In this section—

“correctional officer” has the same meaning as in the Corrections Act;

“judicial officer” means—

(a) a Judge of the Supreme Court or the Court of Appeal, the Master in Chambers or any person for the time being performing the functions of a Judge of the Supreme Court or Court of Appeal or of the Master in Chambers;

(b) the Registrar or Deputy Registrar of the Supreme Court, the Revenue Court or the Court of Appeal or any person for the time being performing the functions of Registrar or Deputy Registrar;

(c) a Resident Magistrate or any person for the time being performing the functions of a Resident Magistrate;

(d) a person employed in a court's office who carries out prosecution of offences or in the Office of the Director of Public Prosecutions or engaged to carry out functions on behalf of the Director of Public Prosecutions;

“member of the security forces” means a member of—

(a) the Jamaica Constabulary Force;

(b) the Jamaica Defence Force to the extent that such member has been assigned to act in aid of the Police;

(c) the Island Special Constabulary Force;

(d) the Rural Police.

3.—(1) Every person who is convicted of murder falling within—

Sentence for
murder.
1/2005
S. 3(a)(b).

- (a) section 2(1)(a) to (f) or to whom subsection (1A) applies, shall be sentenced to death or to imprisonment for life;
- (b) section 2(2), shall be sentenced to imprisonment for life or such other term as the court considers appropriate, not being less than fifteen years.

(1A) This subsection applies to a person who is convicted of murder and who, before that conviction, has been convicted in Jamaica—

1/2005
S. 3(b).

- (a) whether before or after the 14th October, 1992, of another murder done on a different occasion; or
- (b) of another murder done on the same occasion.

(1B) Where a court pronounces a sentence of death pursuant to subsection (1)(a)—

1/2005
S. 3(c).

- (a) the form of the sentence shall be to the effect only that the person is to “suffer death in the manner authorized by law”;
- (b) every person so sentenced shall, after sentence, be confined to some safe place within the correctional institution, apart from all other inmates; and
- (c) the sentence may be carried into execution as heretofore has been the practice.

(1C) In the case of a person convicted of murder, the following provisions shall have effect with regard to that person’s eligibility for parole, as if those provisions had been substituted for section 6(1) to (4) of the Parole Act—

1/2005
S. 3(c).

- (a) where a court imposes a sentence of imprisonment for life pursuant to subsection (1)(a), the court shall specify a period, being not less than twenty years, which that person should serve before becoming eligible for parole; or
- (b) where, pursuant to subsection (1)(b), a court imposes—
 - (i) a sentence of imprisonment for life, the court shall specify a period, being not less than fifteen years; or
 - (ii) any other sentence of imprisonment, the court

OFFENCES AGAINST THE PERSON

shall specify a period, being not less than ten years,

which that person should serve before becoming eligible for parole.

1/2005
S. 3(c).

(1D) A person shall not be sentenced to death under this section by reason of a previous conviction for murder referred to in subsection (1A) 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.

1/2005
S. 3(c).

(1E) 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.

Sentence of death not to be passed on pregnant woman.
42/1969
3rd Sch.
1/2005
S. 3(d).

(2) Where a woman is convicted of murder falling within section 2(1)(a) to (f) or to whom subsection (1A) applies is found in accordance with the provisions of this section to be pregnant, the sentence to be passed on her shall be any sentence of imprisonment that may be imposed under subsection (1)(b) instead of sentence of death.

Procedure where woman convicted of capital offence alleges she is pregnant.
1/2005
S. 3(e).

(3) Where a woman convicted of murder falling within section 2(1)(a) to (f) or to whom subsection (1A) applies alleges that she is pregnant, or where the court before whom a woman is so convicted thinks fit so to order, the question whether or not the woman is pregnant shall, before sentence is passed on her, be determined by a jury.

(4) Subject to the provisions of this subsection, the said jury shall be the trial jury, that is to say the jury to whom she was given in charge to be tried for the offence, and the members of the jury need not be re-sworn:

Provided that—

- (a) if any member of the trial jury, after the conviction, dies or is discharged by the court as being through illness incapable of continuing to act or for any other cause, the inquiry as to whether or not the woman is pregnant shall proceed without him; and
- (b) where there is no trial jury, or where a jury have disagreed as to whether the woman is or is not pregnant, or have been discharged by the court without giving a verdict on that question, the jury shall be constituted as if to try whether or not she was fit to plead, and shall be sworn in such manner as the court may direct.

(5) The question whether the woman is pregnant or not shall be determined by the jury on such evidence as may be laid before them either on the part of the woman or on the part of the Crown, and the jury shall find that the woman is not pregnant unless it is proved affirmatively to their satisfaction that she is pregnant.

(6) Where on proceedings under this section the jury find that the woman in question is not pregnant the woman may appeal under the Judicature (Appellate Jurisdiction) Act, to the Court of Appeal and that Court, if satisfied that for any reason the finding should be set aside, shall quash the sentence passed on her and instead thereof pass on her any sentence of imprisonment that may be imposed under subsection (1)(b):

15/1962
S. 35.

Provided that the operation of the provisions of this subsection shall be deemed to be coincident with the operation of the Judicature (Appellate Jurisdiction) Act.

42/1969
3rd Sch.
1/2005
S. 3(f).

3A.—(1) On an indictment charging a person with murder falling within section 2(1), he may be found not guilty of such murder but guilty of murder falling within section 2(2).

Procedure
regarding
murder
charge.
1/2005
S. 4.

(2) For the purpose of any appeal against conviction, murder falling within section 2(1) shall be treated as a distinct offence from murder falling within section 2(2).

(3) Where on an appeal against a conviction of murder—

(a) falling within section 2(1)(a) to (f); and

(b) for which the appellant has been sentenced to death, the Court substitutes a verdict of guilty of murder falling within section 2(2), the Court shall nevertheless determine whether a sentence of death is the appropriate sentence by virtue of section 3(1A) and shall confirm that sentence if it is so found to be appropriate.

(4) Subject to the foregoing provisions of this section, murder falling within section 2(1) shall not be treated, for any purpose, as a different offence from murder falling within section 2(2).

3B. [*Repealed by Act 1 of 2005.*]

Provisions as
to appeals in
relation to
repeated and
multiple
murders.
14/1992
S. 4.

3C.—(1) Where a person is sentenced to death by virtue of subsection (1A) of section 3, he shall have the like right of appeal against the sentence as if the appeal were against a conviction involving sentence of death.

(2) On any such appeal against sentence, the Court shall have the same powers as to allowing or dismissing the appeal as on an appeal against a conviction; and where the Court allows the appeal, and it appears to the Court that, having regard to the decision on the appeal, the sentence is not warranted in law, the Court shall quash the sentence and pass the appropriate sentence in substitution for it.

(3) Where a person is sentenced to death under subsection (1A) of section 3 (which relates to more than one conviction for murder) and afterwards one of the convictions is set aside on appeal—

(a) that person may apply to the Court of Appeal to set aside the sentence of death on the ground that it is no longer warranted in law having regard to the decision on appeal; and

(b) whether or not an application is made under paragraph (a), the Registrar of the Court of Appeal shall notify the Court that the sentence is one which should be set aside on the ground referred to in that paragraph,

and the Court if satisfied that the sentence is no longer warranted in law, shall set it aside and pass the appropriate sentence in substitution for it.

(4) Where a person is sentenced to death as aforesaid then, unless he is so sentenced on being convicted of murder falling within section 2(1), the sentence shall not in any case be executed so long as the other conviction can be set aside on appeal or by any other legal process.

1/2005
S. 6.

3D.—(1) Subject to subsection (2), where sentence of death is passed on a person convicted of two or more murders tried together it shall be treated as passed in respect of each of the convictions.

Provisions as to procedure regarding two or more murders tried together. 14/1992 S. 4.

(2) If one of the convictions as aforesaid is and any other is not set aside on appeal, the Court deciding the appeal, unless satisfied that the sentence remains warranted in law in respect of any other conviction, shall set the sentence aside and pass the appropriate sentence in substitution for it.

4.—(1) Where a person kills another in the course or furtherance of some other offence, the killing shall not amount to murder unless done with the same malice aforethought (express or implied) as is required for a killing to amount to murder when not done in the course or furtherance of another offence.

Abolition of "constructive malice". 43/1958 S. 3.

(2) For the purposes of the foregoing subsection, a killing done in the course or for the purpose of resisting an officer of justice, or of resisting or avoiding or preventing a lawful arrest, or of effecting or assisting an escape or rescue from legal custody, shall be treated as a killing in the course or furtherance of an offence.

5.—(1) Where a person kills or is a party to the killing of another, he shall not be convicted of murder if he was suffering from such abnormality of mind (whether arising from a condition of arrested or retarded development of mind or any inherent causes or induced by disease or injury) as substantially impaired his mental responsibility for his acts and omissions in

Persons suffering from diminished responsibility. 43/1958 S. 3.

doing or being a party to the killing.

(2) On a charge of murder, it shall be for the defence to prove that the person charged is by virtue of this section not liable to be convicted of murder.

(3) A person who but for this section would be liable, whether as principal or as accessory, to be convicted of murder shall be liable instead to be convicted of manslaughter.

(4) The fact that one party to a killing is by virtue of this section not liable to be convicted of murder shall not affect the question whether the killing amounted to murder in the case of any other party to it.

Provocation.
43/1958
S. 3.

6. Where on a charge of murder there is evidence on which the jury can find that the person charged 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 jury; and in determining that question the jury shall take into account everything both done and said according to the effect which, in their opinion, it would have on a reasonable man.

Suicide pact.
43/1958
S. 3.

7.—(1) It shall be manslaughter, and shall not be murder, for a person acting in pursuance of a suicide pact between him and another to kill the other or be a party to the other killing himself or being killed by a third person.

(2) Where it is shown that a person charged with the murder of another killed the other or was a party to his killing himself or being killed, it shall be for the defence to prove that the person charged was acting in pursuance of a suicide pact between him and the other.

(3) For the purposes of this section “suicide pact” means a common agreement between two or more persons having for its object the death of all of them, whether or not each is to take his own life, but nothing done by a person who enters into a suicide pact shall be treated as

done by him in pursuance of the pact unless it is done while he has the settled intention of dying in pursuance of the pact.

8. All persons who shall conspire, confederate, and agree to murder any person, whether he be a subject of Her Majesty or not, and whosoever shall solicit, encourage, persuade, or endeavour to persuade, or shall propose to any person to murder any other person, whether he be a subject of Her Majesty or not, shall be guilty of a misdemeanour, and being convicted thereof, shall be liable, to be imprisoned for a term not exceeding ten years, with or without hard labour.

Conspiring or soliciting to commit murder.

42/1969
3rd Sch.

9. Whosoever shall be convicted of manslaughter shall be liable to be imprisoned for life, with or without hard labour, or to pay such fine as the court shall award in addition to or without any such other discretionary punishment as aforesaid.

Man-slaughter.
42/1969
3rd Sch.

10. No punishment or forfeiture shall be incurred by any person who shall kill another by misfortune, or in his own defence, or in any other manner without felony.

Excusable homicide.

11. Every offence which, before the fourth day of March, 1837, would have amounted to petit treason, shall be deemed to be murder only, and no greater offence; and all persons guilty in respect thereof, whether as principals or accessories, shall be dealt with, indicted, tried, and punished as principals and accessories in murder.

Petit treason.

12. Where any person, being feloniously stricken, poisoned, or otherwise hurt upon the sea, or at any place out of this Island, shall die of such stroke, poisoning, or hurt in this Island, or being feloniously stricken, poisoned or otherwise hurt at any place in this Island, shall die of

Provision for trial of certain cases of murder or manslaughter.

such stroke, poisoning or hurt upon the sea, or at any place out of this Island, every offence committed in respect of any such case, whether the same shall amount to the offence of murder or manslaughter, or of being accessory to murder or manslaughter, may be dealt with, enquired of, tried, determined, and punished in the parish in which such death, stroke, poisoning, or hurt shall happen, in the same manner in all respects as if such offence had been wholly committed in that parish.

Attempts to Murder

Administering poison, or wounding with intent to murder.

13. Whosoever shall administer to, or cause to be administered to, or to be taken by any person, any poison or other destructive thing, or shall, by any means whatsoever, wound, or cause any grievous bodily harm to any person, with intent, in any of the cases aforesaid, to commit murder, shall be guilty of felony, and, being convicted thereof, shall be liable to be imprisoned for life, with or without hard labour.

42/1969
3rd Sch.

Destroying or damaging building with intent to murder.
42/1969
3rd Sch.

14. Whosoever, by the explosion of gunpowder or other explosive substance, shall destroy or damage any building, with intent to commit murder, shall be guilty of felony, and being convicted thereof, shall be liable to be imprisoned for life, with or without hard labour.

Setting fire to ship, etc., with intent to murder.

15. Whosoever shall set fire to any ship or vessel or any part thereof, or any part of the tackle, apparel or furniture thereof, or any goods or chattels being therein, or shall cast away or destroy, or attempt to destroy, any ship or vessel, with intent in any of such cases to commit murder, shall be guilty of felony, and being convicted thereof, shall be liable to be imprisoned for life, with or without hard labour.

42/1969
3rd Sch.

16. Whosoever shall attempt to administer to, or shall attempt to cause to be administered to, or be taken by any person, any poison or other destructive thing, or shall shoot at any person, or shall by drawing a trigger, or in any other manner, attempt to discharge any kind of loaded arms at any person, with intent, in any of the cases aforesaid, to commit murder, shall, whether any bodily injury be effected or not, be guilty of felony, and being convicted thereof, shall be liable to be imprisoned for life, with or without hard labour.

Attempting to administer poison, etc., with intent to murder

42/1969
3rd Sch

17. Whosoever shall, by any means other than those specified in any of the preceding sections of this Act, attempt to commit murder, shall be guilty of felony, and, being convicted thereof shall be liable to be imprisoned for life, with or without hard labour.

By other means attempting to commit murder
42/1969
3rd Sch

Letters Threatening to Murder

18. Whosoever shall maliciously send, deliver, or utter or directly or indirectly cause to be received, knowing the contents thereof, any letter or writing threatening to kill or murder any person, shall be guilty of felony, and, being convicted thereof, shall be liable to be imprisoned for a term not exceeding ten years, with or without hard labour.

Letters threatening to murder

42/1969
3rd Sch

Use of Audio, Visual or Audiovisual Communication to Promote Criminal Activity

3/2014
3rd. Sch

18A.—(1) A person shall not produce, record, sell, import, perform in public, circulate or play a recording of, an audio, visual or audiovisual communication that—

Use of audio, visual or audiovisual communication to promote criminal activity
3/2014
3rd. Sch

- (a) promotes the killing of or other serious act of violence against any other person or category or group of persons; or
- (b) seeks to promote, encourage or facilitate the criminal activity of a criminal organization.

(2) A person who contravenes subsection (1) commits an offence and shall be liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding one million dollars or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

(3) In this section—

“audio, visual or audiovisual communication” includes—

- (a) an article, report, advertisement or other thing communicated by means of a newspaper, magazine or other periodical;
- (b) a programme, report, advertisement or other thing communicated by means of television, radio, the Internet or any other form of electronic communication;
- (c) a picture or visual image;
- (d) a song or other musical arrangement; or
- (e) any other method of communicating information;

“criminal organization” means any gang, group, alliance, network, combination or other arrangement among three or more persons (whether formally or informally affiliated or organized or whether or not operating through one or more bodies corporate or other associations)—

- (a) that has as one of its purposes the commission of one or more serious offences; or
- (b) in relation to which the persons who are a part thereof or participate therein (individually, jointly or collectively) issue threats or engage in violent conduct to—

- (i) create fear, intimidate, exert power or gain influence in communities, or over other persons, in furtherance of unlawful activity; or
- (ii) obtain, directly or indirectly, a financial or other material benefit.

Acts Causing or Tending to Cause Danger to Life, or Bodily Harm

19. Whosoever shall unlawfully and maliciously prevent or impede any person being on board of, or having quitted any ship or vessel which shall be in distress, or wrecked, stranded, or cast on shore, in his endeavour to save his life, or shall unlawfully or maliciously prevent or impede any person in his endeavours to save the life of any such person as in this section first aforesaid, shall be guilty of felony, and, being convicted thereof, shall be liable to be imprisoned for life, with or without hard labour.

Preventing person endeavouring to save his life in shipwreck

42/1969
3rd Sch

20.—(1) Subject to subsection (2), whosoever, shall unlawfully and maliciously, by any means whatsoever, wound, or cause any grievous bodily harm to any person, or shoot at any person, or, by drawing a trigger, or in any other manner attempt to discharge any kind of loaded arms at any person, with intent in any of the cases aforesaid, to maim, disfigure or disable any person, or to do some other grievous bodily harm to any person, or with intent to resist or prevent the lawful apprehension or detainer of any person, shall be guilty of felony, and, being convicted thereof, shall be liable, to be imprisoned for life with or without hard labour.

Shooting or attempting to shoot or wounding with intent to do grievous bodily harm
18/2010
S 2(a)(b)

42/1969
3rd Sch

(2) A person who is convicted before a Circuit Court of—

18/2010
S 2(c)

(a) shooting with intent to do grievous bodily harm or with intent to resist or prevent the lawful apprehension or detainer of any person; or

(b) wounding with intent, with use of a firearm,

shall be liable to imprisonment for life, or such other term, not being less than fifteen years, as the Court considers appropriate.

(3) In this section, "firearm" has the meaning assigned to it by section 2 of the Firearms Act.

What shall
be deemed
loaded arms.

21. Any gun, pistol, or other arms which shall be loaded in the barrel with gun powder, or any other explosive substance, and ball, shot, slug, or other destructive material, shall be deemed to be loaded arms within the meaning of this Act, although the attempt to discharge the same may fail from want of proper priming, or from any other cause.

Unlawful
wounding.

42/1969
3rd Sch.

22. Whosoever shall unlawfully and maliciously wound or inflict any grievous bodily harm upon any other person, either with or without any weapon or instrument, shall be guilty of a misdemeanour, and, being convicted thereof, shall be liable to be imprisoned for a term not exceeding three years, with or without hard labour.

Attempting
to choke,
etc., in order
to commit
indictable
offence

23. Whosoever shall, by any means whatsoever, attempt to choke, suffocate, or strangle any other person, or shall by any means calculated to choke, suffocate, or strangle, attempt to render any other person insensible, unconscious, or incapable of resistance, with intent in any of such cases thereby to enable

himself, or any other person to commit, or with intent in any of such cases thereby to assist any other person in committing, any indictable offence, shall be guilty of felony, and, being convicted thereof, shall be liable to imprisoned for life, with or without hard labour.

42/1969
3rd Sch.

24. Whosoever shall unlawfully apply or administer to, or cause to be taken by, or attempt to apply or administer to, or attempt to cause to be administered to or taken by, any person, any chloroform, laudanum, or other stupefying or overpowering drug, matter, or thing, with intent, in any of such cases, thereby to enable himself, or any other person to commit, or with intent in any of such cases thereby to assist any other person in committing, any indictable offence, shall be guilty of felony, and, being convicted thereof, shall be liable to be imprisoned for life, with or without hard labour.

Administering drug with intent to commit indictable offence.

42/1969
3rd Sch.

25. Whosoever shall unlawfully and maliciously administer to, or cause to be administered to or taken by any other person, any poison or other destructive or noxious thing so as thereby to endanger the life of such person, or so as thereby to inflict upon such person any grievous bodily harm, shall be guilty of felony, and being convicted thereof, shall be liable to be imprisoned for a term not exceeding ten years, with or without hard labour.

Administering poison so as to endanger life or inflict grievous bodily harm.
42/1969
3rd Sch.

26. Whosoever shall unlawfully and maliciously administer to, or cause to be administered to or taken by any other person, any poison or other destructive or noxious thing, with intent to injure, aggrieve, or annoy such person, shall be guilty of a misdemeanour, and, being convicted thereof, shall be liable to be imprisoned for a term not exceeding three years, with or without hard labour.

Administering poison with intent to injure or annoy.

42/1969
3rd Sch.

Jury may
acquit of
felony, and
find guilty
of mis-
demeanour.

27. If, upon the trial of any person for any felony mentioned in section 25, the jury shall not be satisfied that such person is guilty thereof, but shall be satisfied that he is guilty of any misdemeanour mentioned in section 26, then and in every such case, the jury may acquit the accused of such felony, and find him guilty of such misdemeanour and thereupon he shall be liable to be punished in the same manner as if convicted upon an indictment for such misdemeanour.

Abandoning
or exposing
child
whereby
life
endangered.

28. Whosoever shall unlawfully abandon or expose any child, being under the age of two years, whereby the life of such child shall be endangered, or the health of such child shall have been or shall be likely to be permanently injured, shall be guilty of a misdemeanour, and, being convicted thereof, shall be liable to be imprisoned for a term not exceeding three years, with or without hard labour.

42/1969
3rd Sch.

Causing
bodily injury
by explosion
of gun-
powder.

29. Whosoever shall unlawfully and maliciously by the explosion of gunpowder or other explosive substance, burn, maim, disfigure, disable, or do any grievous bodily harm to any person, shall be guilty of felony and, being convicted thereof, shall be liable to be imprisoned for life, with or without hard labour.

42/1969
3rd Sch.

Causing
gunpowder
to explode,
etc., with
intent to
do grievous
bodily harm.

30. Whosoever shall unlawfully and maliciously cause any gunpowder or other explosive substance to explode, or send or deliver to, or cause to be taken or received by any person any explosive substance, or any other dangerous or noxious thing, or put or lay at any place, or cast or throw at or upon, or otherwise apply to any person, any corrosive fluid, or any destructive or explosive substance, with intent, in any of the cases aforesaid, to burn, maim, disfigure, or disable any person, or to do some grievous bodily harm to any person, shall, whether any bodily injury be effected or not, be guilty of felony, and, being

convicted thereof, shall be liable to be imprisoned for life, with or without hard labour. 42/1969
3rd Sch.

31. Whosoever shall unlawfully and maliciously put or throw upon or across any railway or tramway any wood, stone, or other matter or thing, or shall unlawfully and maliciously take up, remove or displace any rail, sleeper, or other matter or thing belonging to any railway or tramway, or shall unlawfully and maliciously turn, move or divert any points or other machinery belonging to any railway or tramway, or shall unlawfully and maliciously make or show, hide or remove any signal or light upon or near to any railway or tramway, or shall unlawfully and maliciously do or cause to be done any other matter or thing, with intent, in any of the cases aforesaid, to endanger the safety of any person travelling or being upon such railway or tramway, shall be guilty of felony, and being convicted thereof, shall be liable to be imprisoned for life, with or without hard labour. 42/1969
3rd Sch.

Placing wood on railway, etc., with intent to endanger safety of passengers.

32. Whosoever, by any unlawful act, or by any wilful omission or neglect, shall endanger or cause to be endangered, the safety of any person conveyed by or being in or upon a railway or tramway, or shall aid or assist therein, shall be guilty of a misdemeanour, and, being convicted thereof, shall be liable to be imprisoned for a term not exceeding two years, with or without hard labour. Doing anything to endanger safety of passengers on railway.

33.—(1) Whosoever shall advocate or promote genocide is guilty of an indictable offence and shall be liable to be imprisoned for a term not exceeding ten years, with or without hard labour. Genocide.
44/1968
S. 2.

(2) In this section "genocide" means any of the following acts committed with intent to destroy, in whole or in part, any national, ethnical, racial or religious group, as such—

- (a) killing members of the group;
- (b) causing serious bodily or mental harm to members of the group;
- (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) imposing measures intended to prevent births within the group;
- (e) forcibly transferring children of the group to another group.

Assaults

Obstructing
clergyman
in the per-
formance of
his duties.

34. Whosoever shall, by threats or force, obstruct or prevent, or endeavour to obstruct and prevent, any clergyman or other minister in or from celebrating divine service, or otherwise officiating in any church, chapel, meeting-house, or other place of divine worship, or in or from the performance of his duty in the lawful burial of the dead in any church-yard or other burial place, or shall strike, or offer any violence to, or shall, upon any civil process, or under the pretence of executing any civil process, arrest any clergyman or other minister who is engaged in or to the knowledge of the offender is about to engage in, any of the rites or duties in this section aforesaid, or who, to the knowledge of the offender, shall be going to perform the same or returning from the performance thereof, shall be guilty of a misdemeanour, and, being convicted thereof, shall be liable to be imprisoned for a term not exceeding two years, with or without hard labour.

Assaulting
magistrate
when
preserving
wreck.

35. Whosoever shall assault and strike or wound any magistrate, officer, or other person whatsoever lawfully authorized, in or on account of the exercise of his duty in or concerning the preservation of any vessel in distress,

or of any vessel, goods, or effects wrecked, stranded, or cast on shore, or lying under water, shall be guilty of a misdemeanour, and, being convicted thereof, shall be liable to be imprisoned for a term not exceeding seven years, with or without hard labour.

42/1969
3rd Sch.

36. Whosoever shall assault any person with intent to commit felony or shall assault, resist, or wilfully obstruct any constable or peace officer in the due execution of his duty, or any person acting in the aid of such officer, or shall assault any person with intent to resist or prevent the lawful apprehension of himself or any other person for any offence, shall be guilty of a misdemeanour, and being convicted thereof, shall be liable to be imprisoned for a term not exceeding two years, with or without hard labour.

Assault with
intent to
commit
felony, or
on con-
stable, etc

37. Whosoever shall unlawfully, and with force, hinder or prevent any seaman or person labouring on board any vessel from working at or exercising his lawful trade, business, or occupation, or shall beat or use any violence to any such person, with intent to hinder or prevent him from working at or exercising the same, shall, on summary conviction, be liable to imprisonment with hard labour for a term not exceeding three months.

Hindering
seaman from
working at
his trade,
etc.

38. Whosoever shall beat, or use any violence or threat of violence to any person, with intent to deter or hinder him from buying, selling, or otherwise disposing of, or to compel him to buy, sell, or otherwise dispose of any poultry, hogs, grain, fruit, or fish, or other provisions or food in any market or other place, or shall beat, or use any such violence or threats to any person having the care or charge of any poultry, hogs, grain, fruit or fish, or other provisions, whilst on the way to or from any city, market, town or other place in this Island, with intent to stop the

Using
violence to
deter person
from buying
or selling.

conveyance of the same, shall, on summary conviction, be liable to imprisonment with or without hard labour for a term not exceeding three months.

Summary jurisdiction to try common assaults.

39. Where any person shall unlawfully assault or beat any other person, two Justices, upon complaint by or on behalf of the party aggrieved, may hear and determine such offence, and the offender shall, upon summary conviction, be liable to imprisonment with or without hard labour, for a term not exceeding two months, or else shall forfeit and pay such fine not exceeding, together with costs (if ordered) the sum of one thousand dollars; and if such fine as shall be so awarded, together with the costs, if ordered, shall not be paid either immediately after conviction, or within such period as shall at the time of the conviction be appointed, the offender may be committed to imprisonment with or without hard labour, for a term not exceeding two months unless such fine and costs be sooner paid.

31/1995
S. 4.

Aggravated assaults on women or children.

40. When any person shall be charged before a court of summary jurisdiction with an assault or battery upon any male child whose age shall not, in the opinion of such court, exceed fourteen years, or upon any female either upon the complaint of the party aggrieved or otherwise, the said court, if the assault or battery is of such an aggravated nature that it cannot, in their opinion, be sufficiently punished under the provisions hereinbefore contained as to common assaults and batteries, may proceed to hear and determine the same in a summary way, and if the same be proved, may convict the prisoner accused; and every such offender shall be liable to imprisonment with or without hard labour for a term not exceeding six months, or to pay a fine not exceeding (together with costs) the sum of two thousand dollars, and, if the court shall so think fit, in any of the said cases, shall be

31/1995
S. 4.

bound to keep the peace, and be of good behavior for a period not exceeding six months from the expiration of such sentence.

41. If the court, upon the hearing of any such case of assault and battery upon the merits, where the complaint was preferred by or on behalf of the party aggrieved under either section 39 or section 40 shall deem the offence not to be proved, or shall find the assault or battery to have been justified, or so trifling as not to merit any punishment, and shall accordingly dismiss the complaint, the court shall forthwith make out a certificate, stating the facts of such dismissal, and shall deliver such certificate to the party against whom the complaint was preferred.

Justices may dismiss complaint, certifying dismissal.

42. If any person against whom such complaint as is mentioned in either section 39, 40 or 41 shall have been preferred by or on behalf of the party aggrieved shall have obtained such certificate, or, having been convicted, shall have paid the whole amount adjudged to be paid, or shall have suffered the imprisonment, or imprisonment with hard labour awarded; in every such case, he shall be released from all further or other proceedings, civil or criminal, for the same cause:

Certificate or conviction to be a bar to further proceedings.

Provided, that in case the court shall find the assault or battery complained of to have been accompanied by any attempt to commit felony, or shall be of opinion that the same is from any other circumstance, a fit subject for a prosecution by indictment, they shall abstain from any adjudication thereupon, and shall deal with the case in all respects in the same manner as if they had no authority finally to hear and determine the same:

Provided also that nothing herein contained shall authorize any Justices to hear and determine any case of assault or battery in which any question shall arise as to

the title to any land, tenements, or hereditaments, or any interest therein, or accruing therefrom, or as to any bankruptcy or any execution under the process of any court of justice.

Punishment
for common
and aggra-
vated assaults.
42/1969,
3rd Sch.

43. Whosoever shall be convicted upon an indictment of any assault occasioning actual bodily harm shall be liable to be imprisoned for a term not exceeding three years, with or without hard labour; and whosoever shall be convicted upon an indictment for a common assault shall be liable, to be imprisoned for a term not exceeding one year, with or without hard labour.

44. [*Repealed by Act 12 of 2009.*]

45. [*Repealed by Act 12 of 2009.*]

46. [*Repealed by Act 12 of 2009.*]

47. [*Repealed by Act 12 of 2009.*]

48. [*Repealed by Act 12 of 2009.*]

49. [*Repealed by Act 12 of 2009.*]

50. [*Repealed by Act 12 of 2009.*]

51. [*Repealed by Act 12 of 2009.*]

52. [*Repealed by Act 12 of 2009.*]

53. [*Repealed by Act 12 of 2009.*]

54. [*Repealed by Act 12 of 2009.*]

55. [*Repealed by Act 12 of 2009.*]

56. [*Repealed by Act 12 of 2009.*]

57. [*Repealed by Act 12 of 2009.*]

58. [*Repealed by Act 12 of 2009.*]

59. [*Repealed by Act 12 of 2009.*]

60. [*Repealed by Act 12 of 2009.*]

61. [*Repealed by Act 12 of 2009.*]

62. [*Repealed by Act 12 of 2009.*]
 63. [*Repealed by Act 12 of 2009.*]
 64. [*Repealed by Act 12 of 2009.*]
 65. [*Repealed by Act 12 of 2009.*]
 66. [*Repealed by Act 12 of 2009.*]
 67. [*Repealed by Act 12 of 2009.*]

Suppression of Brothels

68.—(1) If it is made to appear to a Justice by information on oath that there is reason to suspect that any premises or part thereof is used as a brothel or for the purposes of habitual prostitution, the Justice may issue a warrant authorizing any constable to enter and search the premises, at any time of the day or night and with such assistance and by such force as may be necessary, and to seize any article found therein which there is reasonable ground for believing will afford evidence as to the commission of any offence of an obscene or immoral nature and to arrest any person found therein who there is reasonable cause to suspect is committing, or has committed, any offence against this Act.

Search
warrants.

(2) Every person so arrested shall be detained in custody until he can be brought before, or shall give bail for his appearance to, the Resident Magistrate of the parish. Every article so seized shall be produced in evidence at the trial, if any person be charged in relation thereto, and may be disposed of in such manner as to the court may seem fit. If there be no such trial such article may be disposed of in such manner as a Resident Magistrate may think fit.

Child Stealing

69. Whosoever shall unlawfully, either by force or fraud, lead or take away, or decoy or entice away, or detain any child under the age of fourteen years, with intent to deprive any parent, guardian, or other person having the lawful care or charge of

Child
stealing.

such child, of the possession of such child, or with intent to steal any article upon or about the person of such child to whomsoever such article may belong; and whosoever shall, with any such intent, receive or harbour any such child, knowing the same to have been by force or fraud led, taken, decoyed, enticed away, or detained as in this section before-mentioned, shall be guilty of felony, and, being convicted thereof, shall be liable to be imprisoned for a term not exceeding seven years, with or without hard labour:

42/1969
3rd Sch.

Provided, that no person who shall have claimed any right to the possession of such child, or shall be the mother, or shall have claimed to be the father of an illegitimate child, shall be liable to be prosecuted by virtue hereof on account of the getting possession of such child out of the possession of any person having the lawful charge thereof.

Kidnapping

70.—(1) Whosoever shall kidnap a person with intent—

- (a) to hold him against his will for ransom, whether by way of money or valuables or any promise to do or refrain from doing anything or any other consideration; or
- (b) to cause him to be unlawfully sent or transported out of Jamaica against his will; or
- (c) to hold him for service against his will,

shall be guilty of a felony and, being convicted thereof, shall be liable to imprisonment for life with or without hard labour.

(2) Whosoever conspires to commit an offence against subsection (1) or solicits, encourages, persuades or endeavours to persuade any person to commit such an offence shall be guilty of a misdemeanour and, being convicted thereof, shall be liable to be imprisoned for a term not exceeding ten years with or without hard labour.

(3) In proceedings under this section where the person in relation to whom the offence is alleged to have been committed is a child under the age of fourteen years any action shall

Kidnapping
with certain
intents per-
sons of any
age.
34/1973.

be deemed to be against his will if it is against the will of his parent or guardian, or other person having the lawful care or charge of such child.

(4) For the purposes of this section a person "kidnaps" when he unlawfully, either by force or fraud, leads or takes away, decoys or entices away, or detains or secretes any other person, so, however, that the fact that a person in relation to whom the offence is alleged to have been committed did not resist is not a defence unless the accused proves that the failure to resist was not caused by fraud or by threats, duress, force or exhibition of force.

Bigamy

71.—(1) Whosoever, being married, shall marry any other person during the life of the former husband or wife, whether the second marriage shall have taken place in this Island or elsewhere, shall be guilty of felony, and, being convicted thereof, shall be liable to be imprisoned for a term not exceeding four years, with or without hard labour; and any such offence may be dealt with, inquired of, tried, determined and punished in any parish of this Island where the offender shall be apprehended, or be in custody, in the same manner in all respects as if the offence had been actually committed in that parish:

Bigamy.

42/1969
3rd Sch.

Provided, that nothing in this section contained shall extend to any second marriage contracted elsewhere than in Jamaica by any Commonwealth citizen, or to any person marrying a second time whose husband or wife shall have been continually absent from such person for the space of seven years then last past, and shall not have been known by such person to be living within that time, or shall extend to any person who, at the time of such second marriage, shall have been divorced from the bond of the first marriage, or to any person whose former marriage shall have been declared void by the sentence of any court of competent jurisdiction.

(2) The wife or husband of a person charged with bigamy may be called as a witness either for the prosecution or

Provision as
to evidence.

defence and without the consent of the person charged.

Attempts to Procure Abortion

Administering drugs or using instruments to procure abortion.

72. Every woman, being with child, who with intent to procure her own miscarriage, shall unlawfully administer to herself any poison or other noxious thing, or shall unlawfully use any instrument or other means whatsoever with the like intent; and whosoever, with intent to procure the miscarriage of any woman, whether she be or be not with child, shall unlawfully administer to her, or cause to be taken by her, any poison or other noxious thing, or shall unlawfully use any instrument or other means whatsoever with the like intent, shall be guilty of felony, and, being convicted thereof, shall be liable to be imprisoned for life, with or without hard labour.

42/1969
3rd Sch.

Procuring drugs, etc., to procure abortion.

73. Whosoever shall unlawfully supply or procure any poison or other noxious thing, or any instrument or thing whatsoever, knowing that the same is intended to be unlawfully used or employed with intent to procure the miscarriage of any woman, whether she be or be not with child, shall be guilty of a misdemeanour, and, being convicted thereof, shall be liable to be imprisoned for a term not exceeding three years, with or without hard labour.

42/1969
3rd Sch.

Concealing the Birth of a Child

Concealment of birth.

74. If any woman shall be delivered of a child, every person who shall by any secret disposition of the dead body of the said child, whether such child died before, at, or after the birth, endeavour to conceal the birth thereof, shall be guilty of a misdemeanour, and being convicted thereof, shall be liable to be imprisoned for a term not exceeding two years, with or with hard labour:

Provided, that if any person tried for the murder of any child shall be acquitted thereof, it shall be lawful for the jury by whose verdict such person shall be acquitted to find, in case it shall so appear 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.

Infanticide

75.—(1) Where a woman by any wilful act or omission causes the death of her child being a child under the age of twelve months, 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 the effect of giving birth to the child or by reason of the effect of lactation consequent upon the birth of the child, then, notwithstanding that the circumstances were such that but for this Act the offence would have amounted to murder, she shall be guilty of felony, to wit, of infanticide, and may for such offence be dealt with and punished as if she had been guilty of the offence of manslaughter of the child.

Offence of
infanticide.

(2) Where upon the trial of a woman for the murder of her child, being a child under the age of twelve months, the jury are of opinion that she by any wilful act or omission caused its death, but that at the time of the act or omission the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the child or by reason of the effect of lactation consequent upon the birth of the child, then the jury may, notwithstanding that the circumstances were such that but for the provisions of this Act they might have returned a verdict of murder, return in lieu thereof a verdict of infanticide.

(3) Nothing in this section shall affect the power of the jury upon an indictment for the murder of a newly-born child to return a verdict of manslaughter, or a verdict of guilty but insane, or a verdict of concealment of birth, in pursuance of section 74.

(4) The said section 74 shall apply in the case of the acquittal of a woman upon indictment for infanticide as it applies upon the acquittal of a woman for murder, and upon the trial of any person over the age of sixteen for infanticide it shall be lawful for the jury, if they are satisfied that the

accused is guilty of an offence under section 9 of the Child Care and Protection Act, to find the accused guilty of such an offence, and in that case that section shall apply accordingly.

Unnatural Offences

Unnatural
crime.

42/1969
3rd Sch.

76. Whosoever shall be convicted of the abominable crime of buggery, committed either with mankind or with any animal, shall be liable to be imprisoned and kept to hard labour for a term not exceeding ten years.

Attempt.

42/1969
3rd Sch.

77. Whosoever shall attempt to commit the said abominable crime, or shall be guilty of any assault with intent to commit the same, or of any indecent assault upon any male person, shall be guilty of a misdemeanour, and being convicted thereof, shall be liable to be imprisoned for a term not exceeding seven years, with or without hard labour.

Proof of Carnal Knowledge

Proof of carnal
knowledge.

78. Whenever upon the trial of any offence punishable under this Act, it may be necessary to prove carnal knowledge, it shall not be necessary to prove the actual emission of seed in order to constitute a carnal knowledge, but the carnal knowledge shall be deemed complete upon proof of penetration only.

Outrages on Decency

Outrages on
decency.

79. Any male person who, in public or private, commits, or is a party to the commission of, or procures or attempts to procure the commission by any male person of, any act of gross indecency with another male person, shall be guilty of a misdemeanour, and being convicted thereof shall be liable at the discretion of the court to be imprisoned for a term not exceeding two years, with or without hard labour.

Other Matters

Apprehension
without war-
rant.

80. Any constable may take into custody, without a warrant, any person whom he shall find lying or loitering in any highway, yard, or other place during the night, that is to say the interval between 7 o'clock in the evening and 6 o'clock in the morning of the next succeeding day, and whom he shall have good cause to suspect of having committed, or being about to

commit any felony in this Act mentioned, and shall take such person, as soon as reasonably may be, before a Justice, to be dealt with according to law.

81. In the case of every felony punishable under this Act every principal in the second degree, and every accessory before the fact, shall be punishable in the same manner as the principal in the first degree is by this Act punishable; and every accessory after the fact to any felony punishable under this Act (except murder) shall be liable to be imprisoned for a term not exceeding two years, with or without hard labour; and every accessory after the fact to murder shall be liable to be imprisoned for life, with or without hard labour; and whosoever shall counsel, aid, or abet the commission of any indictable misdemeanour punishable under this Act shall be liable to be proceeded against, indicted, and punished as a principal offender.

Punishment
of principals
in second
degree and
accessories.

42/1969
3rd Sch.

82. Whenever any person shall be convicted of any indictable misdemeanour punishable under this Act, the court may, if it shall think fit, in addition to or in lieu of any punishment by this Act authorized, fine the offender, and require him to enter into his own recognizances, and to find sureties, both or either for keeping the peace and being of good behaviour; and, in case of any felony punishable under this Act otherwise than with death, the court may, if it shall think fit, require the offender to enter into his own recognizances, and to find sureties both or either for keeping the peace, in addition to any punishment by this Act authorized:

Fines and
sureties for
good behav-
iour.

Provided, that no person shall be imprisoned for not finding sureties under this section for any period exceeding one year.

83. No summary conviction under this Act shall be quashed for want of form, or be removed by *certiorari* into the Supreme Court; and no warrant of commitment shall be held void by reason of any defect therein, provided it be therein alleged that the party has been convicted, and there be a good and valid conviction to sustain the same.

Conviction
not to be
quashed for
want of
form. etc.

Costs on
prosecution
for assault.

84. Where any person shall be convicted on any indictment of any assault, whether with or without battery and wounding, or either of them, such person may, if the court thinks fit, in addition to any sentence which the court may deem proper for the offence, be adjudged to pay to the prosecutor his actual and necessary costs and expenses of the prosecution, and such moderate allowance for the loss of time as the court shall, by affidavit or other inquiry and examination, ascertain to be reasonable; and, unless the sum so awarded shall be sooner paid, the offender shall be imprisoned for any term the court shall award not exceeding three months, in addition to the term of imprisonment (if any) to which the offender may be sentenced for the offence.

Recovery
of costs by
distress.

85. The court may, by warrant under hand and seal, order such sum as shall be so awarded to be levied by distress and sale of the goods and chattels of the offender, and paid to the prosecutor, and that the surplus, if any, arising from such sale shall be paid to the owner; and, in case the sum shall be so levied, the imprisonment awarded until payment of such sum shall thereupon cease.