

JAMAICA

No. 1–2005

I assent,

[L.S.]

H. F. COOKE,
Governor-General.

17th day of February, 2005.

AN ACT to Amend the Offences Against The Person Act.

[18th February, 2005]

BE IT ENACTED by The Queen’s Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, and by the Authority of the same, as follows:—

1. This Act may be cited as the Offences Against the Person (Amendment) Act, 2005, and shall be read and construed as one with the Offences Against the Person Act (hereinafter referred to as the principal Act) and all amendments thereto.

Short title
and
construction.

2. Section 2 of the principal Act is amended—

(a) by deleting the marginal note and substituting therefor the following—

Amendment
of section 2
of principal
Act.

“Murder.” ;

- (b) in subsection (1) by deleting the words “Subject to subsection (2), murder committed in the following circumstances is capital murder” and substituting therefor the words “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)”;
- (c) by deleting subsections (2) and (3) and substituting therefor the following—
 - “ (2) Subject to subsection (3), every person convicted of murder other than a person—
 - (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—
 - (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).”;
- (d) by deleting subsection (4).

3. Section 3 of the principal Act is amended—

Amendment
of section 3
of principal
Act

- (a) by deleting the marginal note and substituting therefor the following—

"Sentence for murder.";

- (b) by deleting subsections (1) and (1A) and substituting therefor the following—

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

(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—

(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.”;

- (c) by inserting the following as subsections (1B) to (1E)—

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

(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—

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

which that person should serve before becoming eligible for parole.

(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.

(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.” ;

- (d) in subsection (2) by deleting the words “a sentence of imprisonment with or without hard labour for life” and substituting therefor the words “any sentence of imprisonment that may be imposed under subsection (1)(b)”;
- (e) in subsections (2) and (3) by deleting the words “an offence punishable with death” and substituting therefor the words “murder falling within section 2(1) (a) to (f) or to whom subsection (1A) applies”;
- (f) in subsection (6) by deleting the words “a sentence of imprisonment with or without hard labour for life” and substituting therefor the words “any sentence of imprisonment that may be imposed under subsection (1)(b)”.

4. The principal Act is amended by deleting section 3A and substituting therefor the following—

Repeal and replacement of section 3A of principal Act

“Procedure regarding murder charge.

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).

(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 with in 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).”.

Repeal of section 3B of principal Act

5. Section 3B of the principal Act is repealed.

Amendment of section 3C of principal Act

6. Section 3C of the principal Act is amended in subsection (4) by deleting the words “capital murder” and substituting therefor the words “murder falling within section 2(1)”.

Amendments to other Acts

7.—(1) Section 6 of the Parole Act is amended—

- (a) in subsection (5) (b) by deleting the figures “3A (2)” and substituting therefor the figures “3 (1C)”; and
- (b) by inserting next after subsection (5) the following as subsection (6)—

“ (6) In relation to a person who had been convicted of murder committed before the date of commencement of the Offences Against the Person (Amendment) Act, 2005, and sentenced to imprisonment for life, the Board shall, upon the expiration of—

- (a) a period of ten years; or
- (b) the period specified by the court as the period which that person should serve before becoming eligible for parole,

whichever is the greater, review the case for purpose of deciding whether or not to grant parole to him.

- (2) The Criminal Justice (Reform) Act is amended in—
- (a) section 3(2) by deleting paragraph (b) and substituting therefor the following—
 - “(b) the offence is murder; or”;
 - (b) section 4(1) by deleting the words “a sentence of imprisonment is, by any enactment, made mandatory” and substituting therefor the words “the offence is murder”;
 - (c) section 10(1) by inserting the following as paragraph (a) of the proviso—
 - “(a) murder;” ;
 - (d) sections 12(1) and 13(1) by inserting next after the word “offence” the words “(other than murder)” ;
 - (e) in sections 3, 10, 12(1) and 13(1) by deleting the word “seventeen” and substituting therefor the word “eighteen”.
- (3) The Gun Court Act is amended in section—
- (a) 2 by deleting the definition of “murder” ;
 - (b) 6(2)(b) by deleting the words “capital offence” and substituting therefor the word “murder”.

8.—(1) Subject to the provisions of this section, the provisions of the principal Act as amended by this Act shall have effect in relation to persons who were sentenced to death on or after the 14th October, 1992, but before the date of commencement of the Offences Against the Person (Amendment) Act, 2005 (hereinafter referred to as the amending Act) as if the amending Act were in force at the time of the sentence, and the provisions of this section shall have effect without prejudice to any appeal which may, at the date of commencement of the amending Act, be pending in respect of those persons or any right of those persons to appeal. Transitional

(2) For the purposes of subsection (1), in relation to the case of every person referred to in that subsection, a Judge of the Supreme Court shall—

- (a) quash any sentence passed before the date of commencement of the amending Act; and

- (b) determine the appropriate sentence having regard to the date of conviction and the provisions of the principal Act as amended by the amending Act.

(3) Where pursuant to subsection (2), a Judge determines that a sentence of death is the appropriate sentence in relation to a murder, he shall by notice in writing to the person convicted of the murder, inform that person of the determination and of the rights conferred by subsection (4).

(4) A person who is notified pursuant to subsection (3) shall have the right to appeal to the Court of Appeal against the sentence imposed pursuant to subsection (2) (b).

(5) The provisions of section 3 (1C) of the principal Act as amended by the amending Act shall not apply to any murder committed before the date of commencement of the amending Act."

(6) Notwithstanding the provisions of section 6 of the Parole Act, the Judge may, on sentencing a person who had been convicted of murder committed before the date of commencement of the amending Act, to imprisonment for life, specify a period, being longer than seven years, which that person should serve before becoming eligible for parole.