

ANTIGUA AND BARBUDA



CRIMINAL PROCEEDINGS (TRIAL BY JUDGE ALONE) BILL, 2021

No. of 2021

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2 *Criminal Proceedings (Trial by
Judge Alone) Bill, 2021*

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ANTIGUA AND BARBUDA
CRIMINAL PROCEEDINGS (TRIAL BY JUDGE ALONE) BILL, 2021
NO. OF 2021

AN ACT to provide for criminal trials without a jury in certain circumstances and for other matters connected or incidental thereto.

ENACTED by the Parliament of Antigua and Barbuda as follows:

PART I
PRELIMINARY

1. Short title and Commencement

(1) This Act may be cited as the Criminal Procedure (Trial by Judge Alone) Act, 2021.

(2) This Act shall come into force on a date which the Minister may appoint and shall remain in force only for such period of time as the COVID pandemic shall persist.

2. Interpretation

In this Act—

“**court**” means the High Court of Justice of Antigua and Barbuda;

“**indictable offences**” includes either-way offences for which a determination has been made that the matter will be tried on indictment;

“**party to the trial**” or “**party**” includes the prosecution.

3. Application of this Act

(1) This Act shall apply to criminal proceedings pending on the commencement date of this Act and legal proceedings instituted on or after the commencement of this Act for the duration of the period identified in section 1 subsection (2).

(2) For the purposes of this section, criminal proceedings are deemed to be instituted once an indictment has been laid against an accused person and the accused person has been committed for trial in the High Court.

PART II

TRIAL WITHOUT A JURY

4. Trial without a jury in certain cases

(1) Notwithstanding anything contained in this Act, the Juries Act No. 6 of 2009, or any other law or rule of criminal practice to the contrary, every person who is committed for trial or indicted, either alone or jointly with others, for any one or more of the offences set out in subsection (2) of this section may be tried before a judge of the court sitting alone without a jury, including the preliminary issue (if raised) of fitness to plead or to stand trial for such offences.

(2) The offences referred to in subsection (1) are,

- (a) indictable offences under the Larceny Act (Cap. 241);
- (b) indictable offences under the Forgery Act, (Cap. 181);
- (c) indictable offences under the Prevention of Corruption Act 2004, No. 21 of 2004;
- (d) indictable offences under the Misuse of Drugs Act (Cap 283);
- (e) indictable offences under the Money Laundering Act 1996, No. 9 of 1996;
- (f) offences under the Proceeds of Crime Act 1993, No. 13 of 1993; and
- (g) indictable offences under the Electronic Crimes Act 2013, No. 14 of 2013

(3) An indictment charging an accused person with an offence specified in subsection (2) shall not include a count for any offence not referred to in that subsection

5. Consent of Accused required to be tried by Judge Alone

- (1) No trial for an indictable offence shall be done by a Judge sitting without a Jury, unless the accused, in writing and after receiving legal advice, confirmed his consent to be so tried by filing the confirmation certificates set out in Form 1 and Form 2 of the Schedule.
- (2) A Judge shall, at the first hearing of a matter after the filing of an indictment –
 - (a) inform the accused person that he may elect to be tried:

- (i) by a Judge and jury; or
 - (ii) by a Judge alone;
- (b) inform the accused person that he may make his election:
- (i) within a period of 21 days from the date of that first hearing; or
 - (ii) at any time thereafter by filing the confirmation certificates set out in Form 1 and Form 2 of the Schedule with the Registrar of the Court and serving a copy thereof on the office of the Director of Public Prosecution.
- (3) Where –
- (a) two or more accused have been charged jointly for an offence in section 4 subsection (2), the consent in writing of each of the accused shall be obtained before the matter can be tried by a Judge alone without a jury;
 - (b) two or more charges are to be tried together, the accused shall consent to be tried by Judge alone in relation to all charges;
 - (c) two or more indictment have been preferred against an accused in relation to any offence listed in section 4(2), the court shall obtain the consent of the accused to be tried by Judge alone in respect of each separate indictment before they may be tried together.

6. Judge to have power of jury in trials without a jury

Where a trial is conducted without a jury, the judge shall have all the power, authority and jurisdiction of a jury.

PART III GENERAL PROVISIONS

7. Judge to give reasons for conviction or acquittal

- (1) The Judge shall, as soon as reasonably practicable and in any event before the expiration of fourteen days, deliver his verdict and, in the case of a conviction, he shall give a written judgment stating the reasons for his verdict at the time of conviction.
- (2) The judgment referred to in subsection (1) shall include the principles of law applied by the Judge and the findings of fact on which the Judge relied.
- (3) Subject to subsection (5), where an accused person is acquitted in a trial by a Judge alone, the Judge may give reasons for his verdict.

- (4) Where the prosecution requests reasons for an acquittal, the Judge shall give reasons within fourteen days of that request.
- (5) Where a Judge fails to deliver his judgment, or to 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 time required for the completion of the task

8. Appeals

(1) An appeal shall lie to the Court of Appeal, at the instance of the accused person, from the decision of the judge given under section 10, convicting the accused person on any of the following grounds:

- (a) without the leave of the Court of Appeal
 - (i) that the Court had no jurisdiction in the case;
 - (ii) that the Court exceeded its jurisdiction in the case;
 - (iii) that the Judge was personally interested in the case;
 - (iv) that the Judge acted corruptly, maliciously or was biased in the case;
 - (v) that the decision was obtained by fraud;
 - (vi) that the case has been already heard or tried and decided by, or forms the subject of a hearing or trial pending before, some competent court;
 - (vii) that legally admissible evidence substantially affecting the merits of the case was rejected by the Court;
 - (viii) that legally inadmissible evidence was admitted by the Court and that there is not sufficient legal evidence to sustain the decision after rejecting such illegal evidence; or
 - (ix) that the decision was erroneous in some other point of law.
- (b) with leave of the Court of Appeal
 - (i) that the decision is unreasonable or cannot be supported having regard to the evidence; or
 - (ii) that the judgment or sentence passed was based on a wrong principle or was such that a Court viewing the circumstances reasonably could not properly have so decided; or
 - (iii) that the sentence imposed was unduly severe.

(2) An appeal shall lie to the Court of Appeal, at the instance of the prosecution, from the decision of the judge acquitting the accused person on any of the following grounds:

- (a) without leave of the Court of Appeal, that the decision was erroneous on a point of law;
- (b) with leave of the Court of Appeal, that the sentence is manifestly inadequate or is wrong in law.

(3) In the determination of an appeal the Court of Appeal shall, subject to this Act and the rules of court, have all the powers of the Court of Appeal under the Eastern Caribbean Supreme Court Act Cap.143 in relation to criminal appeals.

9. Construction of references

Except where the context otherwise requires, a reference to a jury in any of the enactments referenced in section 4 subsection (2) or in any law or judicial authority on criminal proceedings, shall be read with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with a trial by a judge sitting alone without a jury.

FORM 1

(Section 5)

IN THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

CASE NO.

A. B.—The Queen

v.

C. D. — The Accused

CERTIFICATE OF CONFIRMATION OF CONSENT TO BE TRIED BY JUDGE ALONE

I, the Accused, confirm that I **CONSENT** to have my trial in the above matter conducted by a Judge without a Jury and that I freely give this consent of my own choosing without reservation and that no promise, inducement, threat, coercion or force of any kind was employed by anyone to secure my consent to be so tried.

Dated this..... day of, 20.....

.....

Name of Accused

.....

Name of Attorney-at-law

.....
Signature of Accused

.....
Signature of Attorney-at-law.

FORM 2

(Section 5)

IN THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

CASE NO.

A. B.—The Queen

v.

C. D. — The Accused

CERTIFICATE OF CONFIRMATION OF LEGAL ADVICE ON THE DECISION TO ELECT TRIAL BY
JUDGE ALONE

I, the Accused, confirm that I have sought and received advice from the undersigned Attorney-at-law on electing to be tried by a Judge 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 alone. I have had sufficient time to confer with the undersigned Attorney-at law concerning this mode of trial. I understand the implications of electing to be tried by a Judge 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

.....
Name of Attorney-at-law

.....
Signature of Accused

.....
Signature of Attorney-at-law.

No. of 2021

10 *Criminal Proceedings (Trial by
Judge Alone) Bill, 2021*

Passed the House of Representatives on
the day of , 2021.

Passed the Senate on the day of
 , 2021.

.....
Speaker of the House

.....
President of the Senate

EXPLANATORY MEMORANDUM

As a result of the occurrence of the COVID-19 pandemic, criminal trials in the High Court has been almost completely halted. As a result, there is now an even more serious backlog of matters. The object of this Bill is to facilitate the trial of criminal matters in the High Court by Judge alone, that is, by a Judge sitting without a jury.

The Bill contains 9 clauses.

Clause 1 – Short title commencement. Notably, the Act when passed will only apply for the period of the pandemic. There is no provision for an extension of the application of the provisions of the Act beyond that time.

Clause 2 – Interpretation. – Included among the terms defined is “indictable offences” this includes either way offences for which it has already been determined that the matter will be tried on indictment.

Clause 3 – Application. The Act will apply to criminal proceedings that are pending or which will commence on or after the commencement date of this Act.

Clause 4 – Trial without a Jury in certain cases. The matters that may be tried by Judge alone are listed in this clause. Notably, a trial for murder cannot be done in this way.

Clause 5 – consent of accused required to be tried by Judge alone. This is very important. No trial on indictment will be conducted by Judge alone unless the accused person gives his consent **in writing** to be so tried. Additionally, the accused person **MUST** confirm that he has had the benefit of legal advice before making the decision to be so tried.

Clause 6 – Judge to have the power and authority of a jury. This is also important. The Judge will be the sole determinant of fact and law rather than law alone which happens when a jury is present.

Clause 7 – Judge to give reasons for conviction or acquittal

Clause 8 – Appeals. The right of the accused to appeal the decision is clearly outlined; as well as, those grounds which would require leave of the Court of Appeal to file the Appeal.

Clause 9 – Construction of references. In some legislation and in practitioner’s text on criminal proceedings, it is usual to find discussions on what the role of the judge is and what the role of the jury is in respect of a trial on indictment. Such references must now be adapted and accordingly modified as much as possible to permit the smooth function of trial by Judge alone in indictable matters.

Steadroy C. O. Benjamin
Attorney General
Minster of Justice and Legal Affairs
S4:S2