



[L.S.]

I Assent,

James B. Carlisle,
Governor-General.

18th October, 2004.

ANTIGUA AND BARBUDA

No. 13 of 2004

AN ACT to amend the Magistrate's Code of Procedure Act.

ENACTED by the Parliament of Antigua and Barbuda as follows:

*[Published in the Official Gazette Vol. XXIV
No. 79 dated 4th November, 2004]*

1. (1) **This Act** may be cited as the Magistrate's Code of Procedure (Amendment) Act, 2004.

Short title and application.

(2) This Act shall apply to legal proceedings pending on the commencement of this Act and legal proceedings instituted on or after the commencement of this Act.

2. The Magistrate's Code of Procedure Act, **in this Act referred** to as "the principal Act", is amended in section 2 by the deletion from the **definitions** of "adult", "child" and "young person" of the words "age of sixteen years" and the substitution of the words "age of eighteen years".

Amendment of section 2 **Cap. 235.**

3. Sections 14, 15, 16, 20 and 21 of the principal Act are repealed.

Repeal of sections 14, 15, 16, 20 and 21.

4. The principal Act is amended in Part III by the deletion of the title of that Part and the substitution of the following:

Amendment of title of Part III.

"COMMITTAL PROCEEDINGS"

Repeal and substitution of section 41.

5. Section 41 of the principal Act is repealed and the following substituted:

"Definition of "committal proceedings", and "deposition".

41. (1) In this Act, "committal proceedings" means proceedings under this Part for the committal of a person accused of an indictable offence for trial by jury.

(2) For the purposes of this Act and any other law, a reference to a deposition in relation to committal proceedings shall be construed as a reference to any statement admitted in evidence in committal proceedings under this Act."

Amendment of section 42.

6. Section 42 of the principal Act is amended by the deletion of the words "a preliminary inquiry" and the substitution of the words "committal proceedings".

Insertion of sections 42A, 42B and 42C.

7. The principal Act is amended by the insertion, immediately after section 42, of the following sections:

"Institution of committal proceedings.

42A. (1) All committal proceedings shall be instituted under the direction of the Director of Public Prosecutions by the filing of —

- (a) one or more written statements of witnesses in support of the charge; and
- (b) a list of exhibits, if there are any exhibits which the prosecution intends to produce in connection with the proceedings.

(2) The Director of Public Prosecutions shall, as soon as practicable, cause the documents filed under subsection (1) to be served on the accused person.

Accused may file statements in reply.

42B. (1) After the documents under section 42A(1) have been served on the accused person and within such period as may be specified by a Magistrate, the accused may, in reply, file his own statement and any statement

of his witnesses and a list of exhibits, if there are any exhibits which the accused person intends to produce in connection with the proceedings, but failure by the accused person to file any documents or the lack of any such documents shall not, in itself, affect the power of the Magistrate to proceed with and conclude the committal proceedings or to take any other action permitted by this Act.

(2) The Court shall cause the reply filed under subsection (1) to be served on the Director of Public Prosecutions.

Committal
on written state-
ments only.

42C. A Magistrate holding committal proceedings may commit an accused person for trial by jury on a charge of an indictable offence if he is satisfied that either the charge supported by the evidence in the documents filed under section 42A(1) alone or in conjunction with any documents filed under section 42B(1), establish or are likely to establish the indictable offence charged or an indictable offence of a like kind which is not otherwise within his jurisdiction to deal with summarily."

8. Section 43 of the principal Act is amended by the insertion immediately after the word "guardian" of the words "or an adult next of kin";

Amendment of
section 43.

9. Section 44 of the principal Act is amended by the insertion, immediately after the word "guardian" wherever it appears, of the words "or an adult next of kin".

Amendment of
section 44.

10. Section 45 of the principal Act is repealed and the following of subsection substituted:

Repeal and substi-
tution of section
45.

"Offences triable
either on indict-
ment or sum-
marily.

45. (1) Where an adult is charged with an offence that is, by virtue of any enactment, both an indictable offence and a summary offence, the prosecution shall inform the Magistrate dealing with the charge in the presence of the accused person whether the charge is to be tried on indictment or summarily and the Magistrate may make an order to deal with the case in accordance with that information.

(2) **Where** the person charged fails to appear to **answer** the charge, the information required to be given by the prosecution under subsection (1) may be given in his absence.

(3) Before making an order under subsection (1), the Magistrate shall give the accused person an opportunity to show cause, by way of submission only, why the order should not be made.

(4) This section shall not be construed as affecting the operation of section 46.

Repeal and substitution of section 46.

11. Section 46 of the principal Act is repealed and the following section substituted:

"Adult pleading guilty or consenting, to be tried summarily in certain cases.

46. (1) Where an adult is **charged** with an indictable offence in respect of which the penalty prescribed by law does not exceed any of the following:

- (a) a fine of \$10,000; or
- (b) a term of imprisonment for twenty-four months,

and the accused person pleads guilty or consents to the case being dealt with summarily, the Magistrate shall deal summarily with the offence and, notwithstanding any other law, may impose such penalty not exceeding the penalty prescribed for the offence as he considers appropriate.

(2) In every case to which subsection (1) applies, the Magistrate shall, after reading the charge to the accused person, question him to the following effect:

- (a) "How do you plead to the charge?"; and
- (b) if the accused person does not plead not guilty:

"Do you wish to be tried by jury
or do you consent to your case
being dealt with summarily?"

and shall explain to the accused, if necessary,
the meaning of the case being dealt with sum-
marily or by a jury."

12. Section 47 of the principal Act is repealed.

Repeal of section
47.

13. The principal Act is amended by the insertion, immedi-
ately after section 48, of the following section:

Insertion of sec-
tion 48.

"Substitution
of indictable
charge of a like
kind.

48. (1) Subject to subsection (2), where, in
committal proceedings on a charge of an in-
dictable offence the Magistrate is of the opin-
ion that the evidence in the documents filed
under section 42A(1) either alone or in con-
junction with the evidence in the documents
filed under section 42B(1) or any additional
evidence in the documents filed under section
71 (3), an indictable offence of a like kind to the
offence charged is established or appears likely
to be established, the Magistrate may make
such order for the alteration of the charge by
the substitution of another charge of an in-
dictable offence of a like kind to the offence
charged as he thinks necessary in the circum-
stances of the case unless the order cannot, in
his opinion, be made without causing injustice;
and the Magistrate shall thereafter proceed
to deal with the case as provided for in
this Act in relation to indictable offences.

(2) Before making an order under subsec-
tion (1), the Magistrate shall give the prosecu-
tion and the accused person an opportunity
to show cause, by way of submission only,
why the order should not be made."

14. Section 49 of the principal Act is repealed.

Repeal of section
49.

15. Section 50 of the principal Act is repealed and the follow-
ing section substituted:

Repeal and substi-
tution of section
50.

"Power to
 adjourn or
 remand.

50. Where a person is charged with an indictable offence, the Magistrate may, during committal proceedings, from time to time adjourn the case and remand the accused person."

Repeal of sections
 51, 52, 53, 54, 55,
 56 and 57.

16. Sections 51, 52, 53, 54, 55, 56 and 57 of the principal Act are repealed.

Repeal and substitution of section
 58 and 57.

17. Sections 58 of the principal Act is repealed and the following section substituted:

"Final decision on
 committal pro-
 ceedings.

58. (1) At the conclusion of the committal proceedings, the Magistrate may, subject to subsection (2), make any of the following orders:

- (a) dismiss the charge and, if the accused person is in custody, make an order for his release;
- (b) commit the accused person for trial by jury; or
- (c) make any other order in relation to the case, the charge or the accused as provided for in this Act or in any other law.

(2) Before making an order under subsection (1), the Magistrate shall, on an application, give the prosecution or the accused person, as the case may be, an opportunity to show cause, by way of submission only, why the order should not be made."

Amendment
 of section 62.

18. Section 62 of the principal Act is amended —

- (a) by the deletion of subsection (3) and the substitution of the following:

"(3) A Magistrate shall not admit to bail a person charged with any of the following offences:

- (a) high treason, misprision of treason and treasonable felony;
- (b) murder or attempted murder;
- (c) robbery or robbery with aggravation involving the use of a firearm;
- (d) an offence involving the possession or use of an offensive weapon;
- (e) unlawful possession of a **firearm** or ammunition or unlawful use of a firearm, contrary to any provision of the Firearms Act; **Cap. 171**
- (f) contravention of any condition attached to a licence, certificate or permit granted under the Firearms Act; **Cap. 171.**
- (g) **unlawful** importation of firearms contrary to the provisions of the Firearms Act or any other law; **Cap. 171.**
- (h) offences under the Sexual Offences Act. **Act No. 9 of 1995.**

(b) by the insertion, immediately after subsection (3), of the following subsection:

"(4) In paragraph (d) of subsection (3), "offensive weapon" includes any article made or adapted for, or capable of, causing bodily harm or damage to property and intended by the person having it with him for that use by him.";

(c) by renumbering subsection (4) as subsection (5).

19. Section 69 of the principal Act is amended by the deletion of the words "At any time after all the witnesses have been examined" and the substitution of the words "At the **conclusion** of the committal proceedings". **Amendment of section 69.**

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**Repeal of section
70.**

20. Section 70 of the principal Act is repealed.

**Amendment of
section 71.**

21. Section 71 of the principal Act is amended —

- (a) in subsection (2) —
 - (i) in paragraph (b) by the addition, immediately after the colon, of the word "and";
 - (ii) in paragraph (c) by the deletion of the word "and"; and
 - (iii) by the deletion of paragraph (d);
- (b) by the repeal of subsection (3) and the substitution of the following:

“(3) The Magistrate may, on an application by the prosecution or the accused person, allow either of them to **file** documents additional to the documents referred to in section **42A(1)** or **42B(1)**, respectively, within such period as may be specified by ~~the~~ Magistrate; and the documents shall be served on the other party and be treated in the same manner as the documents referred to in those sections.”; and

- (c) in subsection (4) by the deletion of the words “under section **70**” and the substitution of the words “under section **42C**”;

**Amendment
section 76.**

22. Section 76 of the principal Act is amended —

- (a) in the marginal note, by the deletion of the words "more than six months" and the substitution of the words "more than two years or a **fine** exceeding \$10,000";
- (b) in the introductory part of the section, by the insertion, immediately after the words "two years", of the words "or a **fine** exceeding \$10,000"; and

- (c) in the first proviso thereto by the insertion, immediately after the word "guardian" wherever it appears, of the words "or an adult next of kin." **Amendment of section 95.**

23. Section 95 of the principal is repealed and the following section is substituted:

"Award of compensation. 95. The Magistrate may, on an application by a person aggrieved and immediately after the conviction of the person charged, award any amount not exceeding \$10,000 to the person aggrieved, in addition to any penalty, as compensation for personal injury or damage to property caused by the offence."

24. Section 100 of the principal Act is repealed.

Repeal of section 100.

25. Section 150 of the principal Act is amended by the deletion of the words "the Second Schedule" and the substitution of the words "the Schedule".

Amendment of section 150.

26. The principal Act is amended by the insertion, immediately after section 191, of the following Part:

Insertion of Part VIII A.

**"PART VIII A
APPEALS BY DIRECTOR OF PUBLIC
PROSECUTIONS**

Interpretation. 191A. In this Part, "judgment" includes an order, a ruling and a final decision of a Magistrate's Court;

Appeals by Director of Public Prosecutions. 191B. (1) The Director of Public Prosecutions may, subject to subsection (2), appeal to the Court of Appeal from a judgment of a Magistrate's Court in respect of —

- (a) an acquittal or a sentence passed by a Magistrate's Court; or
- (b) the dismissal of a charge against an accused person in committal proceedings.

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(2) An appeal pursuant to subsection (1) may be made **only** on the following grounds:

- (a) in the case of an acquittal, on a point of law;
- (b) in **the** case of a sentence, on the nature or extent of the sentence, or both; and
- (c) in the case of the dismissal of a charge in committal proceedings, on a point of law.

**Procedure, etc.
for appeals by
D.P.P.**

191C. The law applicable to appeals in **criminal** proceedings shall apply to the procedure and other matters in appeals by the Director of Public Prosecutions in the same manner as it applies to an appeal by any other person, except that the Director shall not be required to enter into a recognizance or to provide any other security."

**Repeal of First
Schedule.**

27. The First Schedule to the principal Act is repealed.

**Amendment Sec-
ond Schedule.**

28. The Second Schedule to the principal Act is amended by the deletion, from its title, of the word "Second."

**Amendment of
section 56 of Cap.
224.**

29. Section 56 of the Interpretation Act is amended —

(a) by the insertion of the following definition:

Cap. 255.

"committal proceedings" means proceedings under the Magistrate's Code of Procedure Act for the committal of a person accused of an indictable offence for trial by **jury**;" and

(b) by the deletion of the **definition** "preliminary inquiry".

**Repeal of Cap.
118.**

30. The Criminal Procedure (Committal for Sentence) Act is repealed.

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The Magistrate's Code of Procedure 11 ANTIGUA
(Amendment) Act, 2004. AND
BARBUDA

Passed the House of Representatives this
23rd day of September, 2004.

D. Giselle Isaac-Arrindell,
Speaker.

Y. Henry,
Acting Clerk to the House of Representatives.

Passed the Senate this 7th day of
October, 2004.

Edmond A. Mansoor,
President.

Y. Henry,
Acting Clerk to the Senate.

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