

ANTIGUA AND BARBUDA



CRIMINAL PROCEEDINGS (TRIAL BY JUDGE ALONE) ACT, 2021

No. 8 of 2021

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SCHEDULE

[L.S.]



I Assent,

Rodney Williams,
Governor-General.

28th May, 2021.

ANTIGUA AND BARBUDA

CRIMINAL PROCEEDINGS (TRIAL BY JUDGE ALONE) ACT, 2021

NO. 8 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 Proceedings (Trial by Judge Alone) Act, 2021.
- (2) This Act shall come into force on a date appointed by the Minister and shall remain in force for a period of two years from the date so appointed.

2. Interpretation

In this Act—

“Attorney-at-law” means an Attorney-at-Law who holds a Legal Practitioner's Certificate issued pursuant to the Legal Professions Act, 1997 or a Crown Counsel employed by the Government of Antigua and Barbuda.

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

“criminal proceedings” means pending criminal trials in the High Court; pending or completed committal proceedings in the Magistrates Court;

“decision” means a decision by a High Court Judge—

- (a) as to a verdict of guilty or not guilty;
- (b) a decision on a submission of no case to answer; or
- (c) any other ruling made before or during the course of a criminal trial against an accused person which effectively brings the trial to an end.

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

“Minister” means Minister with responsibility for Legal Affairs;

“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 criminal 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 pending once an accused person has been committed for trial in the High Court and an indictment has been laid against the accused person.

PART II

TRIAL OF INDICTABLE OFFENCES

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 shall 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 (Prevention) Act 1996, No. 9 of 1996;
 - (f) indictable offences under the Proceeds of Crime Act 1993, No. 13 of 1993;
 - (g) indictable offences under the Electronic Crimes Act 2013, No. 14 of 2013
 - (h) indictable offences under the Malicious Damage Act, Cap 258;
 - (i) indictable offences under the Firearms Act, Cap. 171;
 - (j) indictable offences under the Electronic Transfer of Funds Crimes Act No. 16 of 2007
 - (k) indictable offences under the Prevention of Terrorism Act, 2005, No. 12 of 2005;
 - (l) indictable offences under the Debtors Act, Cap 131;
 - (m) indictable offences under the External Trade Act, Cap 163;

- (n) indictable offences under the Pesticides and Toxic Chemicals Act 2008, No.12 of 2008;
- (o) indictable offences under the Biological Weapons Act, Cap 52;
- (p) indictable offences under the Coinage Offences Act, Cap 88;
- (q) indictable offences under the Consumer Protection and Safety, Cap 97;
- (r) indictable offences under the Copyright Act 2003, No. 22 of 2003;
- (s) indictable offences under the Data Protection Act, 2013, No. 10 of 2013;
- (t) indictable offences under the Digital Assets Business Act, 2020, No. 16 of 2020;
- (u) indictable offences under the Distribution and Price of Goods, Cap. 138;
- (v) indictable offences under the Dumping at Sea, Cap. 141;
- (w) indictable offences under the Money Services Business Act, 2011, No. 7 of 2011;
- (x) indictable offences under the Taking of Hostages Act, 1993. No. 4 of 1993;
- (y) indictable offences under the Trafficking in Persons (Prevention) Act, 2010 No. 12 of 2010;
- (z) indictable offences under the Medical Practitioners Act, 2009 No. 3 of 2009

(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 in other cases

- (1) Subject to section 6, every person against whom an indictment has been filed for an offence not mentioned in subsection (2) of section 4 of this Act, shall be tried by a Judge and jury unless –
 - (a) the accused person consents to be tried by a Judge alone in accordance with the provisions of this section; and
 - (b) the Court makes an Order that the accused person be tried by Judge alone.

- (2) At the first hearing after an indictment has been filed, a Judge shall inform the accused person that he may elect to be tried by a Judge and jury or by a Judge sitting alone, without a jury, unless the accused person indicates an intention to enter a plea of guilty.
- (3) Where the accused person does not make an election at the hearing referred to in subsection (2), but subsequently consents to be tried by a Judge alone –
 - (a) the accused shall file his consent with the Registrar of the Court and serve a copy on the prosecution within (7) days of the adjournment of that matter, or before such later date as the Court may order; and
 - (b) the accused shall confirm his consent to be so tried by signing and filing one of the confirmation certificates set out in either Form 1 or Form 2 of the Schedule, and in the case of Form 1, such certificate shall be counter-signed by the Attorney-at-Law who has given the accused legal advice on the matter.
- (4) The Court shall make an order that the accused person be tried by a Judge alone if it is satisfied that the accused person—
 - (a) has sought and received legal advice from an Attorney-at law in relation to a trial by a Judge alone;
 - (b) has filed with the Registrar of the Court a certificate in the form set out as Form 1 of the Schedule; and
 - (c) has given his consent to Trial by Judge alone in accordance with the provisions of this Act.
- (5) Where an accused person informs the court that he or she does not wish to obtain the advice of an Attorney-at-Law and consents to be tried by a Judge alone, the Court shall make an order that the accused person be tried by a Judge alone if the court is satisfied that the accused person—
 - (a) is competent;
 - (b) has freely and without any pressure or inducement, waived his or her right to consult an Attorney-at-law for legal advice in relation to the decision to be tried by a Judge and a jury or a Judge alone; and
 - (c) has filed with the Registrar of the Court a certificate in the form set out as Form 2 of the Schedule
- (6) The Court shall not make an order for a trial by a Judge alone unless it is satisfied that—

- (a) in the case of a joint trial, all other accused persons have consented to be tried by a Judge alone and each accused person has filed a certificate in the form set out as Form 1 or 2 of the First Schedule, as the case may be, in accordance with subsection (4) or (5); and
- (b) where two or more charges are to be tried together, the accused person has consented to be tried by a Judge alone in respect of all of the charges.

(7) In circumstances where —

- (a) the Court makes an order under subsection (4) or (5); or
- (b) an accused person is to be tried before a Judge and jury pursuant to subsection (1) or (2), but before the start of the trial the accused person subsequently applies to the court to change the mode of the trial, the Court may only reverse the Order where there are good and compelling reasons to do so.

(8) The Registrar of the High Court shall ensure that Form 1 and Form 2 are readily available, upon request, to an accused person for the purposes mentioned in subsections (3), (4) and (5) of this section.

6. Prosecution may apply for Trial by Judge Alone in certain circumstances

- (1) Notwithstanding the requirement for consent in section 5, the Prosecution may apply to the court for a trial to be conducted by a Judge without a jury on any one or more of the grounds set out in subsection (2).
- (2) The grounds upon which an application may be made under subsection (1) are the following—
 - (a) that in view of the nature and circumstances of the case, there is a danger of jury tampering or intimidation of witnesses;
 - (b) that a material witness is afraid or unwilling to give evidence before a jury;
 - (c) that the case involves a criminal gang element and would be properly tried without a jury; or
 - (d) that the complexity of the trial or the length of the trial, or both, is likely to make the trial so burdensome to the jury that the interests of justice require that the trial should be conducted without a jury.

(3) An application under subsection (1) shall be heard and determined by a judge in the absence of a jury and both the prosecution and the accused person shall be given an opportunity to make representations with respect to the application

(4) If the judge is satisfied that the relevant ground as specified in subsection (2) of this section, has been established, he shall make an order that the trial shall be conducted without a jury, including the preliminary issue (if raised) of fitness to plead or to stand trial, but if he is not so satisfied he shall refuse the application.

(5) No appeal shall lie against the order of the judge granting or refusing an application under this section for the trial to be conducted without a jury.

(6) In this section—

“danger of jury tampering or intimidation of witnesses” includes instances

- (a) of threatened or actual harm to, or intimidation or bribery of a juror or witness, or any of the family members of such juror or witness;
- (b) of threatened or actual harm to the property of a juror or witness or of any of the family members of such juror or witness has occurred;
- (c) where the trial is a retrial and the jury in the previous trial was discharged because jury tampering or intimidation of a witness had taken place;
- (d) where jury tampering or intimidation of a witness has taken place in previous criminal proceedings involving the Accused or any of the Accused; or
- (e) where there has been intimidation, or attempted intimidation, of any person who is likely to be a witness in the trial.

7. 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

8. 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 decision and he shall give a written judgment stating his reasons therefor.

- (2) The decision 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) Where a Judge fails to deliver his decision within the period specified in subsection (1) he shall convene the Court and inform the parties of the time required for the completion of the task.

9. 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 8, 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;
- (ix) that the consent of the Accused to Trial by Judge alone was not obtained in accordance with this Act; or
- (x) 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.

10. 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.

11. Issue of Practice Directions

The Chief Justice may issue Practice Directions governing

- (a) how judgments with respect to verdicts are to be written; or
- (b) any matter of procedure under this Act.

PART IV CASE MANAGEMENT AND TRIAL

12. Duty of Trial Judge to hold a Case Management Conference

- (1) Prior to the commencement of any Trial by Judge Alone in the High Court, the Trial Judge shall hold a case-management conference.
- (2) The objective of a trial judge at a case management conference shall be to ensure that each case is dealt with efficiently and expeditiously by actively managing each case.
- (3) Active case management includes—
 - (a) the early identification of the real issues;

- (b) the early identification of the needs of witnesses;
 - (c) achieving certainty as to what must be done, by whom, and when, in particular by the early setting of a timetable for the progress of the case;
 - (d) monitoring the progress of the case and compliance with directions;
 - (e) ensuring that evidence, whether disputed or not, is presented in the shortest and clearest way;
 - (f) discouraging delay, dealing with as many aspects of the case as possible on the same occasion, and avoiding unnecessary hearings;
 - (g) encouraging the participants to co-operate in the progression of the case; and
 - (h) making use of technology.
- (4) The Trial Judge must actively manage the case by giving any direction appropriate to the needs of that case as early as possible.
- (5) The parties must actively assist the court in fulfilling the objective in the subsection (2).
- (6) Active assistance for the purposes of this rule includes—
- (a) at the beginning of the case, communication between the prosecutor and the accused at the first available opportunity and in any event no later than the beginning of the day of the first hearing;
 - (b) after that, communication between the parties until the conclusion of the case;
 - (c) by such communication establishing, among other things—
 - (i) whether the Accused is likely to plead guilty or not guilty,
 - (ii) what is agreed and what is likely to be disputed,
 - (iii) what information, or other material, is required by one party of another, and why, and
 - (iv) what is to be done, by whom, and when (without or if necessary with a direction);

- (d) reporting on that communication to the court at the first hearing, and after that, as directed by the court.

(7) The Trial Judge must give a direction that only those witnesses in a matter who are really needed in relation to genuinely disputed, relevant issues should be required to attend.

(8) Before trial, all parties must carefully consider whether or not the contents of a witness deposition are agreed, in which case the physical attendance of a witness at trial will ordinarily be unnecessary.

13. Depositions not in dispute and admissions to be read into evidence at trial

- (1) The depositions of all witnesses whose attendance is not considered to be necessary by the Prosecution and who are not required by the Accused to attend the trial shall be read into evidence at trial.
- (2) Whenever possible, relevant parts from an agreed deposition should be distilled into a set of admissions, agreed between all parties and shall be read into evidence at trial.

SCHEDULE

FORM 1

[Section 5(4)]

(This Form applies if the Accused is represented by an Attorney-at-law)

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:

- a) that I have sought and received legal advice from the undersigned Attorney-at-law on electing to be tried by a Judge alone;
- b) that 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;

- c) that I have had sufficient time to confer with the undersigned Attorney-at law concerning this mode of trial;
- d) that I fully understand the implications of electing to be tried by a Judge alone;
- e) that I **CONSENT and AGREE** to have my trial in the above matter conducted by a Judge **WITHOUT** a Jury and I freely and voluntarily give this consent of my own choosing and my own free will, without reservation.
- f) That no promise, inducement, threat, coercion or force of any kind was employed by anyone to secure my consent to this mode of trial.

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(5)]

(This Form applies if the Accused is **NOT** represented by an Attorney-at-law)

IN THE EASTERN CARIBBEAN SUPREME COURT ANTIGUA AND BARBUDA

CASE NO.

A. B.—The Queen

v.

C. D. — The Accused

CERTIFICATE OF WAIVER OF LEGAL ADVICE ON CONSENT TO TRIAL BY JUDGE ALONE

I, the Accused, confirm:

- a) that I **have not** sought and received advice from an Attorney-at-law on electing to be tried by a Judge alone;
- b) that I **DO NOT WISH** to obtain the services of an Attorney-at-law in this matter;

- c) that I have waived my right to consult an Attorney-at-law for legal advice in relation to a trial by Judge alone in accordance with my right under section 15(2)(d) of the **Constitution of Antigua and Barbuda** to defend myself in person;
- d) that I **CONSENT and AGREE** to have my trial in the above matter conducted by a Judge **WITHOUT** a Jury and I freely and voluntarily give this consent of my own choosing and my own free will, without reservation;
- e) that no promise, inducement, threat, coercion or force of any kind was employed by anyone to secure my consent to this mode of trial or my decision to waive my right to consult an Attorney-at-law;
- f) That I am satisfied with representing myself in this matter.

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

.....
Name of Accused

.....
Signature of Accused

FORM 3

[Section 5(7)]

(This Form applies if the Accused is represented by an Attorney-at-law)

IN THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

CASE NO.

A. B.—The Queen

v.

C. D. — The Accused

CERTIFICATE OF REVERSAL OF ELECTION AS TO MODE OF TRIAL

I, the Accused, confirm:

- a) that I have previously elected to be tried *
☐ by a Judge alone ☐ by a Judge and Jury;
- b) that I am now REVERSING my previous election;

- c) that I have sought and received legal advice from the undersigned Attorney-at-law on REVERSING my election;
- d) that the undersigned Attorney-at-law has advised me of the consequences and the implications of REVERSING my election;
- e) that I have had sufficient time to confer with the undersigned Attorney-at law concerning the reversal of my election as to mode of trial;
- f) that I fully understand the implications of REVERSING MY ELECTION;
- g) that I **CONSENT and AGREE** to the reversal of my election as to mode of trial and I freely and voluntarily give this consent of my own choosing and my own free will, without reservation.
- h) That no promise, inducement, threat, coercion or force of any kind was employed by anyone to secure my consent to the reversal of my election as to mode of trial.

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

.....
Name of Accused

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

.....
Signature of Accused

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

**Tick as appropriate.*

FORM 4

[Section 5(7)]

(This Form applies if the Accused is **NOT** represented by an Attorney-at-law)

IN THE EASTERN CARIBBEAN SUPREME COURT ANTIGUA AND BARBUDA

CASE NO.

A. B.—The Queen

v.

C. D. — The Accused

CERTIFICATE OF REVERSAL OF ELECTION AS TO MODE OF TRIAL

I, the Accused, confirm:

- a) that I have previously elected to be tried *
☐ by a Judge alone ☐ by a Judge and Jury;

- b) that I am now REVERSING my previous election;
- c) that I have NOT sought and received legal advice from an Attorney-at-law on REVERSING my election;
- d) that I maintain that I **DO NOT WISH** to obtain the services of an Attorney-at-law in this matter;
- e) that I have waived my right to consult an Attorney-at-law for legal advice in relation to REVERSING my election in accordance with my right under section 15(2)(d) of the **Constitution of Antigua and Barbuda** to defend myself in person;
- f) that I **CONSENT and AGREE** to the reversal of my election as to mode of trial and I freely and voluntarily give this consent of my own choosing and my own free will, without reservation.
- g) That no promise, inducement, threat, coercion or force of any kind was employed by anyone to secure my consent to the reversal of my election as to mode of trial.
- h) that I am satisfied with representing myself in this matter.

**Tick as appropriate.*

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

.....
Name of Accused

.....
Signature of Accused

Passed the House of Representatives on
the 6th day of May, 2021.

Passed the Senate on the 19th day of
May, 2021.

Gerald Watt, Q.C.,
Speaker.

Alincia Williams-Grant,
President.

Rosemarie Smith-Weston,
Clerk to the House of Representatives.

Rosemarie Smith-Weston,
Clerk to the Senate.