



SECOND SESSION OF THE 11TH PARLIAMENT (2016/2017)

REPORT
OF
THE SPECIAL SELECT COMMITTEE OF THE SENATE
APPOINTED TO CONSIDER AND REPORT ON
A BILL ENTITLED, “AN ACT TO AMEND THE OFFENCES AGAINST
THE PERSON ACT, CHAP 11:08 AND THE CRIMINAL PROCEDURE
ACT, CHAP. 12:02 AND FOR RELATED MATTERS”

MP PARL: No. 14/2/29

Senate Paper No. 32 of 2017

[Ordered to be printed by the Senate]

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INTRODUCTION

ESTABLISHMENT OF COMMITTEE AND TERMS AND REFERENCE

Appointment

1.1 Pursuant to a resolution passed in the Senate on Tuesday June 13, 2017, a Special Select Committee was appointed to consider and report on a Bill entitled, “*AN ACT to amend the Offences Against the Person Act, Chap 11:08 and the Criminal Procedure Act, Chap. 12:02 and for related matters*”.

Membership

1.2 At the said sitting, the Senate further agreed that the following Senators be appointed to serve on this Select Committee:

Mr. Clarence Rambharat	-	Chairman
Mr. W. Michael Coppin	-	Member
Mr. Daniel Dookie	-	Member
Mr. Gerald Ramdeen	-	Member
Ms. Sophia Chote, S.C .	-	Member

1.3 Senator Jennifer Raffoul was able to participate in the Committee meetings, in accordance with the General Rules - Appendix III, Number 9 of the Senate Standing Orders which state:

“any Senator (not being a Member of the Committee) may attend any meeting of a Select Committee but cannot participate in the proceedings except by leave of the Committee”.

1.4 The Hon. Faris Al-Rawi, MP – Attorney General and Minister of Legal Affairs in whose name the Bill stands, was also able to participate in the proceedings, in accordance with General Rules - Appendix III, Number 10 of the Senate Standing Orders.

Terms of Reference

1.5 The Committee was mandated to consider the details of the Bill.

1.6 The Committee was also mandated to report by Tuesday June 20, 2017.

Secretarial Assistance

1.7 Secretariat support to your Committee was provided by:

- Mr. Brian Caesar - Secretary
- Ms. Vahini Jainarine - Assistant Secretary
- Ms. Khisha Peterkin - Assistant Secretary
- Mrs. Krystle Gittens - Graduate Research Assistant

Meetings

1.8 Since its appointment, the Committee held two (2) meetings on the following dates:

- First Meeting - Wednesday June 14, 2017; and
- Second Meeting - Friday June 16, 2017.

1.9 The Minutes of the meetings are attached at ***Appendix III***. Members' attendance is at ***Appendix IV***.

CONSIDERATION OF THE BILL

APPROACH DURING DELIBERATIONS

2.1 The Committee briefly discussed the approach to be taken and determined that due to the imminence of the date on which the Committee's Report was due, deliberations on the Bill should commence immediately.

2.2 The Committee commenced the Clause by Clause analysis of the Bill with the following officials:

Chief Parliamentary Counsel

- Mr. Ian Macintyre, S.C. - Chief Parliamentary Counsel
- Ms. Lorraine John - Assistant Chief Parliamentary Counsel
- Ms. Megan Doyle - Chief Parliamentary Counsel I

Office of the Attorney General

- Mr. Jason Dass - Legal Officer I

2.3 The Committee during its discussions acknowledged the need for expert advice and therefore agreed to request guidance from Professor Gerard Hutchinson, Forensic Psychiatrist to better understand a person's mental capacity and his/her ability to make critical decisions.

Clause by Clause Analysis of the Bill

2.4 The Committee undertook an analysis of the issues raised during debate on the Bill and in its clause by clause analysis the Committee identified legislative and enforcement issues within the text. Some areas of concern identified, clarified and resolved included:

- (a) The use of the following words:
 - i. *mitigating factors*;
 - ii. *aggravating factors*; and
 - iii. *sub-normality or mental abnormality*.
- (b) The timeframe for Judges to deliver written judgments (fourteen days);
- (c) The inclusion of certain public officers such as customs officers, immigration officers, the defence force and armed forces;
- (d) The change of the word judgment to verdict; and
- (e) The inclusion of the phrase "*No promise, inducement, threat, coercion or force of any kind whatsoever was employed to secure my election of this mode of trial*" in Forms 31 and 32.

2.5 The Committee caused the preparation of the redrafted Bill by the Chief Parliamentary Counsel's Department.

2.6 The Committee reviewed the redrafted Bill as submitted by the Chief Parliamentary Counsel via email round robin and agreed that the proposed amendments appropriately addressed the concerns raised by interested parties. After making some minor changes all the amendments were approved.

2.7 The amendments were incorporated in the revised version of the Bill attached at **Appendix II**. The *List of Amendments agreed to by the Committee is attached at Appendix I*.

RECOMMENDATION

3.1 The Committee recommends that the revised version of the Bill be accepted by the Senate at the earliest opportunity, subject to the amendments listed on *Appendix I*.

CONCLUSION

4.1 The Committee wishes to report that, in accordance with its mandate, scrutiny of the Bill referred has been completed. The amendments proposed to the Bills are at **Appendix I** and these are incorporated in the **revised version of the Bill** attached at **Appendix II**, for ease of reference.

4.2 The Committee is grateful to all who have assisted it in its work.

4.3 The Committee hereby submits its report for the approval and adoption of the Senate. Respectfully submitted.

Mr. Clarence Rambharat
Chairman

Mr. W. Michael Coppin
Member

Mr. Daniel Dookie
Member

Mr. Gerald Ramdeen
Member

Ms. Sophia Chote
Member

APPENDIX I

List of Amendments

THE MISCELLANEOUS PROVISIONS (TRIAL BY JUDGE ALONE) BILL, 2017

LIST OF AMENDMENTS

Clause	Extent of Amendment
3	Delete paragraph (a) and substitute the following paragraph: “(a) in section 4A - (i) in subsection (6), by deleting from the words “require the jury” to the word “known” and substituting the words “require the jury or the Judge as the case may be, to declare whether the accused was so convicted by them or by him on the ground of such abnormality of mind and, if the jury declare or the Judge declares, that the conviction was on that ground, the Court may instead of passing such sentence as is provided by law for that offence, direct the finding of the jury or the Judge to be recorded and thereupon the Court may order such person to be detained in safe custody, in such place and manner as the Court thinks fit until the Court’s pleasure is known”; and (ii) by repealing subsection (7) and substituting the following subsections: “(7) Where the Court makes an order of detention under subsection (6), the Judge shall, within fourteen days of making the order, determine what he considers to be the appropriate minimum period of detention to be served and give his reasons. (8) In determining the appropriate minimum period of detention pursuant to subsection (7), the Judge shall take into account – (a) the penal objectives of retribution and general deterrence; (b) the seriousness of the offence; (c) the principle of individualized sentencing;

Clause

Extent of Amendment

- (d) any aggravating or mitigating factors;
- (e) any victim impact statements submitted to the Court; or
- (f) any other relevant matters.

(9) For the purposes of subsection (8)(d), aggravating factors include –

- (a) planning and premeditation;
- (b) the killing of a child, senior citizen, differently-abled person or otherwise vulnerable victim;
- (c) evidence of sadism, gratuitous violence, or sexual maltreatment, humiliation or degradation before the killing;
- (d) killing for gain in the course of burglary, robbery, blackmail, insurance fraud or other offence;
- (e) multiple killings;
- (f) the killing of a witness or potential witness to defeat the course of justice;
- (g) the killing of any person doing his public duty, including a judicial officer, a member of the Defence Force or the Protective Services, a customs officer, an immigration officer or a postal worker;
- (h) terrorism or politically motivated killings;
- (i) the use of firearms or other dangerous weapons, whether carried for defensive or offensive reasons;

Clause

Extent of Amendment

(j) a record of serious violence; and

(k) attempts to dismember or conceal the body.

(10) For the purposes of subsection (8)(d), mitigating factors include –

(a) age;

(b) provocative words or acts on the part of the victim;

(c) absence of an intention to kill;

(d) spontaneity and lack of premeditation (beyond that necessary to constitute the offence);

(e) mercy killing;

(f) plea of guilty; and

(g) hard evidence of remorse or contrition.

(11) An order of detention under subsection (6) shall be reviewed by a Judge of the High Court in accordance with this section.

(12) A person in respect of whom an order of detention is made under subsection (6) may appeal to the Court of Appeal against–

(a) the determination of an appropriate minimum period of detention under subsection (7); or

(b) a decision of a Judge upon the review of the order of detention under this section.

(13) For the purposes of a review under subsection (12), the Commissioner of Prisons or

Clause

Extent of Amendment

the head of the institution in which the person is detained, as the case may be, shall transmit to the Registrar of the Supreme Court the following documents, which shall be prepared in respect of each year following the making of an order of detention under subsection (6), or in respect of such shorter interval as the Court may, in exceptional circumstances, order:

- (a) a full report addressing –
 - (i) the conduct of the person during his detention;
 - (ii) the response of the person to the punishment and to any counselling provided to, or rehabilitative programmes engaged in by, the person;
 - (iii) the attitude of the person towards the offence for which he was convicted; and
 - (iv) the response of the person to any moral or religious teaching,and containing such recommendations for the guidance of the Court as the Commissioner of Prisons or the head of the institution, as the case may be, thinks fit;
- (b) an up-to-date mental assessment report from a psychiatrist;
- (c) such other information derived from the record of the case or otherwise as the Court may require.

Clause

Extent of Amendment

(14) The Commissioner of Prisons or the head of the institution, as the case may be, shall ensure that –

(a) information provided under subsection (13) and relating to the progress and development of a person detained under an order made under subsection (6) is generated by the appropriate department in the prison or institution at yearly intervals or such shorter intervals as the Court may, in exceptional circumstances, order;

(b) the documents referred to in subsection (13) are transmitted to the Registrar of the Supreme Court within three months from –

(i) the anniversary of the making of the order; or

(ii) the end of any shorter interval ordered by the Court under paragraph (a); and

(c) copies of the documents referred to in subsections (13) and (15) are sent to the Director of Public Prosecutions and, where applicable, the Attorney-at-law representing the detained person.

(15) The Commissioner of Prisons or the head of the institution, as the case may be, shall ensure that the mental assessment reports in respect of each period of three years or such shorter period as the Court may, in exceptional circumstances, order, are independently reviewed by a psychiatrist and that the report of that psychiatrist is transmitted to the Registrar of the Supreme Court within three months from –

Clause

Extent of Amendment

(a) every third anniversary of the making of the order; or

(b) the end of any shorter interval ordered by the Court under subsection (14)(a).

(16) Within fourteen days of receiving documents referred to in subsections (13) and (15) in respect of a period of three years or such shorter period as the Court may, in exceptional circumstances, order, the Registrar of the Supreme Court shall forward those documents to the Chief Justice.

(17) The Chief Justice shall, within fourteen days of receiving documents under subsection (16), assign a Judge of the High Court to review the matter and the Judge shall, within two months of receiving those documents, review the matter.

(18) Where a Judge is not assigned pursuant to subsection (17), any party may apply to the Court for a Judge to review the matter in accordance with this section.”.

4 (a) A. In the proposed section 6(1), delete the words “committed for trial shall be tried on an indictment and, subject to the provisions of this Act, shall” and substitute the words “against whom an indictment has been filed shall, subject to the provisions of this Act,”.

B. Delete the proposed section 6(2), (3) and (4) and substitute the following subsections:

“ (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 alone, unless the accused person indicates an intention to enter a plea of guilty.

L.N.
No. 55
of 2016 (2A) An accused person who indicates an intention to enter a plea of guilty shall be dealt with in accordance with section 61 and the Criminal Procedure Rules, 2016.

Clause

Extent of Amendment

(3) Where the accused person does not make an election at that hearing, he shall file his election with the Registrar of the Supreme Court and serve a copy on the prosecution within sixty days of the adjournment of that matter, or before such later date as the Court may order.

(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; and
- (b) has filed with the Registrar of the Supreme Court a certificate in the form set out as Form 31 of the First Schedule.

(5) Where an accused person does not wish to be represented by an Attorney-at-law and elects to be tried by a Judge alone, 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) is competent and has waived his right to consult an Attorney-at-law for legal advice in relation to a trial by a Judge alone; and
- (b) has filed with the Registrar of the Supreme Court a certificate in the form set out as Form 32 of the First 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 elected to be tried by a Judge alone and each accused person has filed a certificate in the form set out as Form 31 or 32 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 elected to be tried by a Judge alone in respect of all of the charges.

(7) Subject to subsection (8)-

Clause

Extent of Amendment

- (a) where the Court makes an order under subsection (4) or (5), the accused person may subsequently apply to the Court for a trial before a Judge and jury;
- (b) an accused person who elected to be tried before a Judge and jury pursuant to subsection (2) or (3) may subsequently apply to the Court for a trial by a Judge alone; or
- (c) where the first hearing after the filing of an indictment against an accused person took place before the coming into force of the Miscellaneous Provisions (Trial by Judge Alone) Act, 2017 –
 - (a) the Registrar of the Supreme Court shall cause to be served on the accused person, a notice informing him that he may, at least sixty days before the date fixed for his trial, apply to the Court for a trial by a Judge alone; and
 - (b) the accused person may, subject to subsection (8), apply to the Court for a trial by a Judge alone.

(8) An application under subsection (7) shall be made at least sixty days before the date fixed for trial.

(9) Where an accused person makes an application in accordance with–

- (a) subsections (7)(a) and (8), the Court shall make an order granting the application; or
- (b) subsection (7)(b) or (c) and subsection (8), the Court shall, subject to subsections (4), (5) and (6), make an order that the accused be tried by a Judge alone.”.

4(d) A. In the proposed section 42B(1) –

- (a) insert after the word “closed”, the words “in a trial by a Judge alone”;
- (b) insert after the words “the Judge shall”, the words “, as soon as reasonably practicable and in any event before the expiration of

Clause

Extent of Amendment

fourteen days, deliver his verdict and, in the case of a conviction, he shall”;

(c) delete from the words “the conviction” to the end of the section and substitute the words “his verdict at the time of conviction”.

B. In the proposed section 42B(3), delete the quotation mark and semicolon at the end of the section.

C. In the proposed section 42B insert after subsection (3), the following new subsections:

“(4) 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.

(5) Where the prosecution requests reasons for an acquittal, the Judge shall give reasons within fourteen days of that request.

(6) Where a Judge fails to deliver his judgment, or give reasons for an acquittal, within the period specified in subsection (1) or (5), as the case may be, he shall convene the Court and inform the parties of the time required for the completion of the task.”;

4(f) Insert after subparagraph (ii), the following subparagraph:

“(iii) by inserting after subsection (3), the following subsection:

“(4) In a trial by a Judge alone, the Judge shall, at the time of making a decision pursuant to this section, give his reasons for that decision.”;

4(g) In the proposed section 64, insert after the words “take his trial”, the words “, and the Judge shall, at the time of making a decision pursuant to this section, give his reasons for that decision.”;

4(h) Delete the words “,” and insert after the proposed subsection (1), the following subsection:

“(1A) In a trial by a Judge alone, the Judge shall, at the time of making a decision pursuant to this section, give his reasons for that decision.”;

4(j) Delete the word “and” appearing after the semicolon.

4(k) A. Delete the full stop at the end of the paragraph and substitute the words “; and”.

B. Insert after paragraph (k) the following paragraph:

“(l) in the First Schedule by inserting after Form 30, the following forms:

“FORM 31

(Section 6(4))

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

Clause**Extent of Amendment**

REPUBLIC OF TRINIDAD AND TOBAGO
No.

A. B. — The State

V

C. D. — The Accused

**CERTIFICATE OF CONFIRMATION OF LEGAL ADVICE
ON ELECTING 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 whatsoever 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

(BLOCK LETTERS)

(Signature)

.....
Accused

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

(BLOCK LETTERS)

(Signature)

.....
Attorney-at-law

FORM 32

(This Form applies if the Accused is not represented by an Attorney-at-law) (Section 6(5))

REPUBLIC OF TRINIDAD AND TOBAGO
No.

A. B. — The State

V

Clause

Extent of Amendment

C. D. — The Accused

CERTIFICATE OF WAIVER OF LEGAL ADVICE ON ELECTING TRIAL BY JUDGE ALONE

I, the Accused, confirm that I have not sought and received advice from an Attorney-at-law on electing to be tried by a Judge alone and I have waived my right to consult an Attorney-at-law for legal advice in relation to a trial by Judge alone. I elect to be tried by a Judge alone and agree to it without reservation. No promise, inducement, threat, coercion or force of any kind whatsoever was employed to secure my election of this mode of trial. I voluntarily and of my free will agree to it. I am satisfied with representing myself in this matter.

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

.....
Name of Accused
(BLOCK LETTERS)

(Signature)

.....
Accused ”.

5 Delete clause 5 and substitute the following clause:

“Application 5. (1) This Act applies to an
Chap. 12:02 indictment for which the trial has not
begun under the Criminal Procedure Act.

(2) This Act does not apply to any
trial on indictment that began under the
Criminal Procedure Act prior to the
commencement of this Act.”.

New
clauses
2A and
2B

Insert after clause 2 the following new clauses:

“Chap. 2A. (1) The Supreme Court of Judicature Act is
4:01 amended in section 44 (1) by inserting after the
amended word “jury” the words “or Judge as the case
may be,”.

(2) The Court of Appeal Rules are amended in
Appendix C in Criminal Form II, in item (4) by

Clause**Extent of Amendment**

inserting after the word “Jury” the words “/Judge”.

Chap. 4:20 2B. Section 100 of the Summary Courts Act
is amended -

amended (a) in subsection (3), by inserting after
the word “jury” the words “or by a
Judge alone”; and

(b) in subsection (4), by inserting after
the word “jury” the words “or by a
Judge alone”.”.

Long Insert after the word “amend” the following words “the Supreme Court of
title Judicature Act, Chap. 4:01, the Summary Courts Act, Chap. 4:20,”.

APPENDIX II

Revised Version of the Bill (Amendments are in Bold)

AS AMENDED IN THE SENATE

No. 2 of 2017

Second Session Eleventh Parliament Republic of
Trinidad and Tobago

SENATE

BILL

AN ACT to amend the **Supreme Court of
Judicature Act, Chap. 4:01**, the **Summary
Courts Act, Chap. 4:20**, the Offences Against
the Person Act, Chap. 11:08 and the Criminal
Procedure Act, Chap. 12:02 and for related
matters

THE MISCELLANEOUS PROVISIONS (TRIAL BY JUDGE
ALONE) BILL, 2017

Explanatory Notes

(These notes form no part of the Bill but are intended only to indicate its general purport)

The purpose of this Bill is to amend **the Supreme Court of Judicature Act, Chap. 4:01, the Summary Courts Act, Chap. 4:20**, the Offences Against the Person Act, Chap. 11:08 and the Criminal Procedure Act, Chap. 12:02.

The Bill contains 5 clauses.

Clause 1 of the Bill would provide for the short title of the Act.

Clause 2 of the Bill would provide for the commencement of the Act.

Clause 2A of the Bill would amend the Supreme Court of Judicature Act, Chap. 4:01.

Clause 2B would amend the Summary Courts Act, Chap. 4:20.

Clause 3 of the Bill would amend the Offences Against the Person Act, Chap. 11:08—

- (a) in section 4A(6), by providing that in a trial for murder, a jury or Judge may declare that an accused person was convicted by them or him on the ground of abnormality of mind, and that the Court may direct that finding to be recorded, instead of passing such sentence as is provided by law for that offence;
- (b) in section 4A(7), by inserting after the words “the finding of the jury” the words “or the Judge, as the case may be,” which would, in effect, provide that a report of a jury or Judge shall be reported as soon as practicable by the Court;
- (c) in section 4B, by providing for a jury or Judge, as the case may be, to make findings and determinations in their or his opinion;
- (d) by repealing section 19 and substituting a new section 19 which would provide that in a trial for an offence under section 17 of the Act, a jury or Judge

may find an accused person guilty of the offence under section 18, if the jury or Judge is satisfied of certain grounds provided for in the new section; and

- (e) in section 58, by providing for a jury or Judge, as the case may be, to make a finding.

Clause 4 of the Bill would amend the Criminal Procedure Act, Chap. 12:02—

- (a) by repealing section 6 and substituting a new section 6 to provide for the mode of trial of an accused person. This new section would provide that an accused person committed for trial shall be committed on an indictment by a Judge and jury unless he elects to be tried by a Judge alone. This option may only be accessed by an accused person if the Court is satisfied of certain grounds provided for in the new section. This new section would also provide that if an accused person elects to be tried by a Judge alone or by Judge and jury, he cannot subsequently apply to be tried in a different manner;
- (b) by inserting after section 6, two new sections 6A and 6B. Section 6A would provide that in a trial by Judge alone the jurisdiction of a Judge is the same afforded to a Judge in a trial by jury, as well as, the jurisdiction of a jury in a trial by jury. Section 6B would provide that references in other written laws to a jury and trial by jury *inter alia* shall be read with such adaptations to bring the references into conformity with a trial by a Judge alone, as the case may be;
- (c) in section 37, by providing that a Court shall order a jury for the trial of an accused person unless the Court had made an order under section 6(2) that the accused person may be tried by a Judge alone;
- (d) by inserting after section 42A, a new section 42B, which would provide that a Judge shall give a written judgment on his decision at the conviction or acquittal of an accused person. The new section also provides what the Judge's written judgment is to contain, and states that the accused person may appeal the Judge's decision to the Court of Appeal;
- (e) in section 62(2), by deleting the words "a jury" and substituting the words "a Judge";

- (f) by repealing section 62(3), 62(4) and 62(5);
- (g) by repealing section 62(6) and substituting a new section 62(6) which would provide that, in a case of an expectant mother convicted of a capital offence, a Judge shall determine whether the woman is pregnant or not on written or oral evidence given by at least two medical practitioners;
- (h) in section 62(7), by deleting the words “jury find” and substituting the words “Judge finds”;
- (i) by repealing section 63(2) and substituting a new section 63(2) which would provide that in a trial of a woman for the murder of her child under the age of twelve months, a jury or a Judge, as the case may be, may determine that the woman caused the death of her child by reason of her mind being disturbed as a result of her not fully recovering from the birth of her child or the effect upon her of the lactation consequent upon the birth of the child; and return a verdict of infanticide;
- (j) in section 63(3), by inserting after the word “jury” the words “or the Judge, as the case may be,”;
- (k) by repealing section 64 and substituting a new section 64 which would provide for the procedure a Judge is to take if an accused person appears on arraignment to be insane;
- (l) by repealing section 65(1) and substituting a new section 65(1) which would provide for the procedure a Judge is to take if an accused person appears during a trial to be insane; and
- (m) in section 66, by deleting the word “jury” wherever it appears and substituting the word “Judge”;
- (n) in section 67, by inserting after the word “jury” the words “or Judge, as the case may be,”; and
- (o) in section 68, by deleting the word “jury” and substituting the word “Judge”.

Clause 5 of the Bill would provide that the Act does not apply to any trial on indictment that began under the Criminal Procedure Act, Chap. 12:02 prior to the commencement of this Act.

THE MISCELLANEOUS PROVISIONS (TRIAL BY JUDGE
ALONE) BILL, 2017

Arrangement of Clauses

Clause

1. Short title
2. Commencement
- 2A. Chap. 4:01 amended**
- 2B. Chap. 4:20 amended**
3. Chap. 11:08 amended
4. Chap. 12:02 amended
- 5. Application Chap. 12:02**

BILL

AN ACT to amend the Supreme Court of
**Judicature Act, Chap. 4:01, the Summary
Courts Act, Chap. 4:20**, the Offences Against
the Person Act, Chap. 11:08 and the Criminal
Procedure Act, Chap. 12:02 and for related
matters

[, 2017]

ENACTED by the Parliament of Trinidad and Tobago as Enactment
follows:

- Short title **1. This Act may be cited as the Miscellaneous Provisions (Trial By Judge Alone) Act, 2017.**
- Commencement **2. This Act shall come into operation on such date as is fixed by the President by Proclamation.**
- Chap. 4:01 amended **2A. (1) The Supreme Court of Judicature Act is amended in section 44 (1) by inserting after the word “jury” the words “or Judge as the case may be,”.**
- Chap. 4:20 amended **(2) The Court of Appeal Rules are amended in Appendix C in Criminal Form II, in item (4) by inserting after the word “Jury” the words “/Judge”.**
- Chap. 11:08 amended **2B. Section 100 of the Summary Courts Act is amended—**
- (a) in subsection (3), by inserting after the word “jury” the words “or by a Judge alone”; and**
- (b) in subsection (4), by inserting after the word “jury” the words “or by a Judge alone”.**
- 3. The Offences Against the Person Act is amended—**
- (a) in section 4A—**
- (i) in subsection (6), by deleting from the words “require the jury” to the word “known” and substituting the words “require the jury or the Judge as the case may be, to declare whether the accused was so convicted by them or by him on the ground of such abnormality of mind and, if the jury declare or the Judge declares, that the conviction was on that ground, the Court may instead of**

passing such sentence as is provided by law for that offence, direct the finding of the jury or the Judge to be recorded and thereupon the Court may order such person to be detained in safe custody, in such place and manner as the Court thinks fit until the Court's pleasure is known"; and

- (ii) by repealing subsection (7) and substituting the following subsections:

“(7) Where the Court makes an order of detention under subsection (6), the Judge shall, within fourteen days of making the order, determine what he considers to be the appropriate minimum period of detention to be served and give his reasons.

(8) In determining the appropriate minimum period of detention pursuant to subsection (7), the Judge shall take into account—

- (a) the penal objectives of retribution and general deterrence;
- (b) the seriousness of the offence;
- (c) the principle of individualized sentencing;

- (d) any aggravating or mitigating factors;
- (e) any victim impact statements submitted to the Court; or
- (f) any other relevant matters.

(9) For the purposes of subsection (8)(d), aggravating factors include—

- (a) planning and premeditation;
- (b) the killing of a child, senior citizen, differently-abled person or otherwise vulnerable victim;
- (c) evidence of sadism, gratuitous violence, or sexual maltreatment, humiliation or degradation before the killing;
- (d) killing for gain in the course of burglary, robbery, blackmail, insurance fraud or other offence;
- (e) multiple killings;
- (f) the killing of a witness or potential witness to defeat the course of justice;

- (g) the killing of any person doing his public duty, including a judicial officer, a member of the Defence Force or the Protective Services, a customs officer, an immigration officer or a postal worker;
 - (h) terrorism or politically motivated killings;
 - (i) the use of firearms or other dangerous weapons, whether carried for defensive or offensive reasons;
 - (j) a record of serious violence; and
 - (k) attempts to dismember or conceal the body.
- (10) For the purposes of subsection (8)(d), mitigating factors include—
 - (a) age;
 - (b) provocative words or acts on the part of the victim;
 - (c) absence of an intention to kill;
 - (d) spontaneity and lack of premeditation (beyond that necessary to consti-

- tute the offence);
- (e) mercy killing;
- (f) plea of guilty; and
- (g) hard evidence of remorse or contrition.

(11) An order of detention under subsection (6) shall be reviewed by a Judge of the High Court in accordance with this section.

(12) A person in respect of whom an order of detention is made under subsection (6) may appeal to the Court of Appeal against—

- (a) the determination of an appropriate minimum period of detention under subsection (7); or
- (b) a decision of a Judge upon the review of the order of detention under this section.

(13) For the purposes of a review under subsection (12), the Commissioner of Prisons or the head of the institution in which the person is detained, as the case may be, shall transmit to the Registrar of the Supreme Court the following documents, which shall be prepared in

respect of each year following the making of an order of detention under subsection (6), or in respect of such shorter interval as the Court may, in exceptional circumstances, order:

(a) a full report addressing –

- (i) the conduct of the person during his detention;
- (ii) the response of the person to the punishment and to any counselling provided to, or rehabilitative programmes engaged in by, the person;
- (iii) the attitude of the person towards the offence for which he was convicted; and
- (iv) the response of the person to any moral or religious teaching,

and containing such recommendations for the guid-

ance of the Court as the Commissioner of Prisons or the head of the institution, as the case may be, thinks fit;

(b) an up-to-date mental assessment report from a psychiatrist;

(c) such other information derived from the record of the case or otherwise as the Court may require.

(14) The Commissioner of Prisons or the head of the institution, as the case may be, shall ensure that—

(a) information provided under subsection (13) and relating to the progress and development of a person detained under an order made under subsection (6) is generated by the appropriate department in the prison or institution at yearly intervals or such shorter intervals as the Court may, in exceptional circumstances, order;

(b) the documents referred to in subsection (13) are transmitted to the Registrar of the Supreme Court within three months from—

(i) the anniversary of the making of the order; or

(ii) the end of any shorter interval ordered by the Court under paragraph (a); and

(c) copies of the documents referred to in subsections (13) and (15) are sent to the Director of P u b l i c Prosecutions and, where applicable, the Attorney-at-law representing the detained person.

(15) The Commissioner of Prisons or the head of the institution, as the case may be, shall ensure that the mental assessment reports in respect of each period of three years or such shorter period as the Court may, in exceptional circumstances, order, are

independently reviewed by a psychiatrist and that the report of that psychiatrist is transmitted to the Registrar of the Supreme Court within three months from—

(a) every third anniversary of the making of the order; or

(b) the end of any shorter interval ordered by the Court under subsection (14)(a).

(16) Within fourteen days of receiving documents referred to in subsections (13) and (15) in respect of a period of three years or such shorter period as the Court may, in exceptional circumstances, order, the Registrar of the Supreme Court shall forward those documents to the Chief Justice.

(17) The Chief Justice shall, within fourteen days of receiving documents under subsection (16), assign a Judge of the High Court to review the matter and the Judge shall, within two months of receiving those documents, review the matter.

(18) Where a Judge is not assigned pursuant to subsection (17), any party may apply to the Court for a Judge to review the matter in accordance with this section.”.

(b) in section 4B—

- (i) by inserting after the word “jury” wherever it appears the words “or Judge, as the case may be,”; and
- (ii) by deleting the words “their opinion” and substituting the words “their or his opinion”;

(c) by repealing section 19 and substituting the following section:

“On indictment under section 17 jury or Judge may find verdict under section 18

19. If, upon the trial of any person for an offence under section 17—

(a) the jury are not satisfied that such person is guilty of that offence but are satisfied that such person is guilty of an offence under section 18; or

(b) the Judge is not satisfied that such person is guilty of that offence but is satisfied that such person is guilty of an offence under section 18,

then and in every such case the jury or the Judge may acquit the accused for the offence under section 17 and find him guilty of

the offence under section 18 and thereupon he shall be liable to be punished in the same manner as if convicted upon an indictment for the offence under section 18.”; and

- (d) in section 58, by inserting after the word “jury” the words “or the Judge, as the case may be,”.

Chap. 12:02
amended

4. The Criminal Procedure Act is amended—

- (a) by repealing section 6 and substituting the following section:

“Mode of trial 6. (1) Every person **against whom an indictment has been filed shall, subject to the provisions of this Act,** shall be tried by a Judge and jury unless he elects to be tried by a 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 alone, unless the accused person indicates an intention to enter a plea of guilty.**

L.N. No. 55
of 2016

(2A) **An accused person who indicates an intention to enter a plea of guilty shall be dealt with in accordance with section 61 and the Criminal Procedure Rules, 2016.**

(3) **Where the accused person does not make an election at that hearing, he shall file his election with the Registrar of the Supreme**

Court and serve a copy on the prosecution within sixty days of the adjournment of that matter, or before such later date as the Court may order.

(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; and
- (b) has filed with the Registrar of the Supreme Court a certificate in the form set out as Form 31 of the First Schedule.

(5) Where an accused person does not wish to be represented by an Attorney-at-law and elects to be tried by a Judge alone, 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) is competent and has waived his right to consult an Attorney-at-law for legal advice in relation to a trial by a Judge alone; and

(b) has filed with the Registrar of the Supreme Court a certificate in the form set out as Form 32 of the First 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 elected to be tried by a Judge alone and each accused person has filed a certificate in the form set out as Form 31 or 32 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 elected to be tried by a Judge alone in respect of all of the charges.

(7) Subject to subsection (8)—

(a) where the Court

makes an order under subsection (4) or (5), the accused person may subsequently apply to the Court for a trial before a Judge and jury;

(b) an accused person who elected to be tried before a Judge and jury pursuant to subsection (2) or (3) may subsequently apply to the Court for a trial by a Judge alone; or

(c) where the first hearing after the filing of an indictment against an accused person took place before the coming into force of the Miscellaneous Provisions (Trial by Judge Alone) Act, 2017—

(a) the Registrar of the Supreme Court shall cause to be served on the accused person, a notice informing him that he may, at least sixty days

before the date fixed for his trial, apply to the Court for a trial by a Judge alone; and

(b) the accused person may, subject to subsection (8), apply to the Court for a trial by a Judge alone.

(8) An application under subsection (7) shall be made at least sixty days before the date fixed for trial.

(9) Where an accused person makes an application in accordance with—

(a) subsections (7)(a) and (8), the Court shall make an order granting the application; or

(b) subsection (7)(b) or (c) and subsection (8), the Court shall, subject to subsections (4), (5) and (6), make an order that the accused be tried by a Judge alone.”.

(b) by inserting after section 6, the following sections:

“Jurisdiction
of the Judge

6A. In a trial by a Judge alone,

the Judge shall have the power, authority and jurisdiction which he would have had in a trial by jury, and the power to determine any question and to make any finding which would have been required to be determined or made by a jury.

References
to jury in
written laws

6B. (1) Except where the context otherwise requires, a reference in this Act or any other written law to a jury, the verdict of a jury or the finding of a jury shall be read, in relation to a trial by a Judge alone, as a reference to the Judge, the verdict of the Judge or the finding of the Judge, as the case may be.

(2) For the purposes of a trial by a Judge alone, the provisions of this Act or any other written law, insofar as they are predicated on a trial with a jury, shall be read and construed 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.”;

- (c) in section 37, by deleting the words “order a jury for the trial of the accused person accordingly” and substituting the words “ , unless it makes an order under section 6(2), shall order a jury for the trial of the accused person accordingly.”;
- (d) by inserting after section 42A, the following section:

“Judge to give
reasons for
decision

42B. (1) When the case on both sides is closed **in a trial by Judge alone**, 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) A judgment by a Judge in any such case shall include the principles of law applied by the Judge and the findings of fact on which the Judge relied.

(3) If any other law requires a warning to be given to a jury in any such case, the Judge is to take the warning into account in dealing with the matter.

(4) 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.

(5) Where the prosecution requests reasons for an acquittal, the Judge shall give reasons within fourteen days of that request.

(6) Where a Judge fails to deliver his judgment, or give reasons for an acquittal, within the period specified in subsection (1) or (5), as the case may be, he shall convene

the Court and inform the parties of the time required for the completion of the task.”;

(e) in section 62—

- (i) in subsection (2), by deleting the words “a jury” and substituting the words “a Judge”;
- (ii) by repealing subsections (3), (4) and (5);
- (iii) by repealing subsection (6) and substituting the following subsection:

“ (6) The question whether the woman is pregnant or not shall be determined by a Judge, on written or oral evidence of at least two medical practitioners and the burden of proof shall be on the person alleging pregnancy.”;
- (iv) in subsection (7), by deleting the words “jury find” and substituting the words “Judge finds”;

(f) in section 63—

- (i) by repealing subsection (2) and substituting the following subsection:

“ (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 or the Judge is, as the case may be, of opinion that she by any wilful act caused its death, but that at the time of the act 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 or the Judge may, notwithstanding that the circumstances were such that but for this section they or he might have returned a verdict of murder, return in lieu thereof a verdict of infanticide.”; and

- (ii) in subsection (3), by inserting after the word “jury” the words “or the Judge, as the case may be,”;

- (iii) **by inserting after subsection (3), the following subsection:**

(4) In a trial by a Judge alone, the Judge shall, at the time of making a decision pursuant to this section, give his reasons for that decision.”;

- (g) by repealing section 64 and substituting the following section:

“Procedure
where person
appears on
arraignment
to be insane

64. If any accused person appears, on arraignment, to be insane, the Judge on written or oral evidence of at least two medical practitioners may, find whether such person is or is not insane and unfit to take his trial, **and the Judge shall, at the time of making a decision pursuant to this section, give his reasons for that decision.”**

(h) in section 65, by repealing subsection (1) and substituting the following subsection:

“ (1) If, during the trial of an accused person, such person appears, after the hearing of evidence to that effect or otherwise, to the jury or the Judge, as the case may be, before whom he is tried, to be insane—

(a) the Court shall in such case direct the jury to; or

(b) the Judge before whom he is tried shall,

abstain from finding a verdict upon the indictment, and, in lieu thereof, to return a verdict that such person is insane.

(1A) In a trial by a Judge alone, the Judge shall, at the time of making a decision pursuant to this section, give his reasons for that decision.”;

(i) in section 66, by inserting after the word “jury” wherever it appears the words “or Judge, as the case may be,”;

(j) in section 67, by inserting after the word “jury” the words “or Judge, as the case may be,”;

(k) in section 68, by deleting the word “jury” and substituting the word “Judge”; **and**

(l) in the First Schedule by inserting after Form 30, the following forms:

“FORM 31

[Section 6(4)]

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

REPUBLIC OF TRINIDAD AND TOBAGO

No.

A. B.—The State

V

C. D. — The Accused

CERTIFICATE OF CONFIRMATION OF LEGAL ADVICE ON ELECTING
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
(BLOCK LETTERS)

(Signature)

.....
Accused

.....
Name of Attorney-at-law
(BLOCK LETTERS)

(Signature)

.....
Attorney-at-law

FORM 32

[Section 6(5)]

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

REPUBLIC OF TRINIDAD AND TOBAGO

No.

A. B.—The State

V

C. D.—The Accused

**CERTIFICATE OF WAIVER OF LEGAL ADVICE ON ELECTING TRIAL
BY JUDGE ALONE**

I, the Accused, confirm that I have not sought and received advice from an Attorney-at-law on electing to be tried by a Judge alone and I have waived my right to consult an Attorney-at-law for legal advice in relation to a trial by Judge alone. I elect to be tried by a Judge alone and agree to it 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. I am satisfied with representing myself in this matter.

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

.....

Name of Accused

(BLOCK LETTERS)

(Signature)

.....

Accused

”.

5. (1) This Act applies to an indictment for Application
which the trial has not begun under the Criminal Chap.12:02
Procedure Act.

**(2) This Act does not apply to any trial on
indictment that began under the Criminal
Procedure Act prior to the commencement of this
Act.**

Passed in the Senate this day of ,
2017.

Clerk of the Senate

I confirm the above.

President of the Senate

Passed in the House of Representatives this day
of , 2017.

Clerk of the House

I confirm the above.

Speaker

No. 2 of 2017

SECOND SESSION
ELEVENTH PARLIAMENT
REPUBLIC OF
TRINIDAD AND TOBAGO

BILL

AN ACT to amend the Supreme Court of Judicature Act, Chap. 4:01, the Summary Courts Act, Chap. 4:20, the Offences Against the Person Act, Chap. 11:08 and the Criminal Procedure Act, Chap. 12:02 and for related matters

Received and read the

First time

Second time

Third time

APPENDIX III

Minutes

MINUTES OF THE FIRST MEETING OF THE SPECIAL SELECT COMMITTEE (SENATE) APPOINTED TO CONSIDER AND REPORT ON A BILL ENTITLED “THE MISCELLANEOUS PROVISIONS (TRIAL BY JUDGE ALONE) BILL, 2017, HELD IN THE ANR ROBINSON WEST MEETING ROOM, LEVEL 9, TOWER D, THE PORT OF SPAIN INTERNATIONAL WATERFRONT CENTRE, 1A WRIGHTSON ROAD, PORT OF SPAIN ON JUNE 14, 2017

Present were:

Mr. Clarence Rambharat	Chairman
Mr. W. Michael Coppin	Member
Mr. Daniel Dookie	Member
Mr. Gerald Ramdeen	Member
Ms. Sophia Chote, S.C.	Member

Also Present were:

Ms. Jennifer Raffoul (see 4.2[iii])	Observer
The Hon. Attorney General Faris Al-Rawi	Minister in charge of the Bill (see 4.2 [iv])

Chief Parliamentary Counsel’s Department

Mr. Ian Macintyre, S.C.	Chief Parliamentary Counsel
Ms. Megan Doyle	Chief Parliamentary Counsel I

Office of the Attorney General Secretariat

Mr. Jason Dass	Legal Officer I
Ms. Farzana Nazir-Mohammed	Legal Officer I

Mr. Brian Caesar	Secretary
Ms. Vahini Jainarine	Assistant Secretary
Ms. Khisha Peterkin	Assistant Secretary
Mrs. Krystle Gittens	Parliamentary Intern

CALL TO ORDER

1.1 The Chairman called the meeting to order at 2:12 p.m. Those present were welcomed.

EXCUSES FOR ABSENCE/LATE ARRIVAL

2.1 The Chairman indicated that Ms. Sophia Chote, SC was delayed in traffic.

QUORUM

3.1 The Chairman advised that in accordance with Standing Order 85(3) the Vice-President of the Senate, Mr. Nigel De Freitas by letter dated June 14, 2017 directed that the quorum of the Committee shall be three (3) Members inclusive of the Chairman.

TERMS OF REFERENCE

4.1 The Chairman reminded Members of the Committee's terms of reference:

- i. to consider and report on a Bill entitled "**The Miscellaneous Provisions (Trial by Judge Alone) Bill, 2017**"; and
- ii. to report by **June 20, 2017**.

4.2 The Chairman also referred Members to:

- i. Standing Order 67(1) of the Senate on the procedure in Committee on Bills after Second Reading:

"any Committee to which a Bill is committed after second reading shall not discuss the general merits and principles of the Bill, but only its details."

- ii. Appendix III Number 9 of the Standing Orders of the Senate on the General Rules for the conduct of proceedings of Committees, with reference to Senator Jennifer Raffoul's attendance:

"any Senator (not being a Member of the Committee) may attend any meeting of a Select Committee but cannot participate in the proceedings except by leave of the Committee."

- iii. By leave of the Committee, Senator Jennifer Raffoul at 2:12 p.m. was permitted to attend the meeting, and participate in the proceedings but not vote.
- iv. Appendix III Number 10 of the Standing Orders of the Senate on the General Rules for conduct of proceedings of Committees, with regard to the Attorney General:

"the Minister or Member in charge of a Bill may take part in the proceedings of the Committee even though not a Member of the Committee but may not vote on any question put to the Committee."

- v. The Chairman informed the Committee that the Attorney General would join later in the proceedings.

DISCUSSIONS ON THE WAY FORWARD

5.1 The Chairman reminded Members of the following documents which were circulated to Members:

- i. A copy of the Bill “The Miscellaneous Provisions (Trial by Judge Alone) Bill, 2017”;
- ii. Tracked Change Version of Bill Miscellaneous Provisions (Trial by Judge Alone) Bill, 2017 – Approved Version by AG for Circulation – AVC
- iii. The consolidated amendments as prepared by the CPC, further to discussions held during the Committee Stage on June 13, 2017;
- iv. Bill Essentials.
- v. List of Amendments to be moved by the Attorney General
- vi. The proposed amendments by Senator Dr. Dhanayshar Mahabir.
- vii. The Hansard extracts of the Committee Stage of the Bill dated Thursday June 08, 2017 and Tuesday June 13, 2017;
- viii. Senator Gerald Ramdeen – Court of Appeal Judgment (H.C.C. No. CV2009-00409) and Practice Statement (Juveniles: Murder Tariff);
- ix. Practice Statement Crime Life Sentences;
- x. Chuck Atin No. 2 v The State Cr. A No 29 of 2004; and
- xi. Mukesh Maharaj v Attorney General of Trinidad and Tobago CV A No. 118 of 2010.

CLAUSE BY CLAUSE ANALYSIS OF THE BILL

6.1 At 2:20 p.m. the officials from the Chief Parliamentary Counsel’s Department, and the Office of the Attorney General were invited to join the meeting to assist the Committee in its deliberations.

6.2 The clause by clause consideration of the Bill proceeded as indicated in **Appendix I**.

6.3 The CPC undertook to review the Bill and make the necessary track changes, to reflect amendments made during the clause by clause analysis.

6.4 Members of the Committee stated that they would also review the amendments in light of the further changes made, and would come prepared to discuss at the next meeting.

6.5 The Committee had discussion on engaging the services of Professor Gerard Hutchinson to assist the Committee in examining mental disability.

OTHER BUSINESS

7.1 The Chairman reminded the Committee of the imminent reporting deadline.

ADJOURNMENT

8.1 The Chairman thanked Members for their attendance.

8.2 The Chairman adjourned the meeting to Friday June 16, 2017 at 1:00 p.m.

8.3 The adjournment was taken at 5:42 p.m.

I certify that these Minutes are true and correct.

Mr. Clarence Rambharat
Chairman

Mr. Brian Caesar
Secretary

June 14, 2017

Appendix 1

Clause No.	Issues Raised	Decision Taken
3 (a)(ii)	The time period of <i>"twenty-eight days"</i> in section 4A subsection (7)	Change period to <i>"fourteen days"</i>
3 (a)(ii)	The <i>"aggravating factors"</i> in section 4A subsection (9)	Review <i>"aggravating factors"</i>
3 (a)(ii)	Section 4A subsection (9) (g)	Expand the list of <i>"person doing public business"</i> to include customs officers, immigration officers, etc.
3 (a)(ii)	The <i>"mitigating factors"</i> in section 4A subsection (10)	Review <i>"mitigating factors"</i>
3 (a)(ii)	The inclusion of the mitigating factor <i>"subnormality or mental abnormality"</i> in section 4A subsection (10) (b)	Request professional guidance from Dr. Gerard Hutchinson with respect to clarification concerning <i>"subnormality or mental abnormality"</i>
3 (a)(ii)	The phrasing of the mitigating factor <i>"provocation in a non-technical sense"</i> in section 4A subsection (10) (c)	Change the words <i>"provocation in a non-technical sense"</i> to <i>"provocative words or acts"</i> . Also add from whom the words or acts stem.
3 (a)(ii)	The inclusion of section 4A subsection (11) <i>"No appeal shall lie from the determination of an appropriate minimum period of detention under subsection (7)"</i>	Delete section 4A subsection (11) and provide for the right of appeal.
3 (a)(ii)	Qualify <i>"psychiatrist"</i> in section 4A subsection (13) (b)	Delete and substitute the following: <i>an up-to-date psychological medical report and or a medical psychiatric report from a psychiatrist registered with the Medical Board of Trinidad and Tobago"</i>
3 (a)(ii)	Section 16	Include <i>"to petition the court in the case that the case is not listed"</i>
4 (a)	Inclusion of statement in section 6 subsection (2) , <i>"unless the accused person indicates an intention to enter a plea of guilty."</i>	Delete <i>"unless the accused person indicates an intention to enter a plea of guilty."</i>

Clause No.	Issues Raised	Decision Taken
4 (a)	Phrasing of part of section 6 subsection (2) that states “ <i>At the first hearing after an indictment has been filed, a Judge shall inform the accused person that he may elect</i> ”	Rephrase to state “ <i>At the first case management conference (reference language from Criminal Procedure Rules) a judge shall inform the accused person of his right to elect</i> ”
4 (a)	Qualification for accused person in section 6 subsection (5)(a) to “ <i>waive his right to consult and attorney</i> ”	Insert “ <i>is competent</i> ” before “ <i>has waived...</i> ”
4 (a)	Section 6 subsection (7) does not address persons already in the system.	Insert transitional provision such as “ <i>any person against whom an indictment has already been filed, and the person is before the court, the accused person may apply to the Court for a trial by a Judge alone.</i> ”
4 (d)	The time period of “ <i>three months</i> ” in section 42B subsection (1)	Change “ <i>three months</i> ” to “ <i>fourteen days</i> ”
4 (d)	The time period of “ <i>three months</i> ” in section 42B subsection (5)	Change “ <i>three months</i> ” to “ <i>fourteen days</i> ”
4 (d)	There is no provision for persons to access bail while awaiting a judgement under section 42B	Add the following: section 42B subsection (7) “ <i>Right to bail remains pending delivery of judgment.</i> ”
4 (f) (iii)	In Section 63 subsection 4 the time period when the Judge shall give reasons for his decision is not specified.	Insert “ <i>at that time</i> ” after “ <i>he shall</i> ”
4 (g)	In Section 64 the time period when the Judge shall give reasons for his decision is not specified.	Insert “ <i>at that time</i> ” after “ <i>he shall</i> ”
4 (h)	In Section 65 subsection 1A the time period when the Judge shall give reasons for his decision is not specified.	Insert “ <i>at that time</i> ” after “ <i>he shall</i> ”
Form 31	The wording of the “ <i>CERTIFICATE OF CONFIRMATION OF LEGAL ADVICE ON ELECTING TRIAL BY JUDGE ALONE</i> ” only includes wording that addresses coercion of	Include wording that addresses both coercion and enticement of a person to choose to be tried by a Judge alone such as “ <i>No one has threatened, forced,</i>

Clause No.	Issues Raised	Decision Taken
	a person to choose to be tried by a Judge alone.	<i>enticed or no promises have been made to me into electing this mode of trial."</i>
Form 32	The wording of the "CERTIFICATE OF WAIVER OF LEGAL ADVICE ON ELECTING TRIAL BY JUDGE ALONE" only includes wording that addresses coercion of a person to choose to be tried by a Judge alone.	Include wording that addresses both coercion and enticement of a person to choose to be tried by a Judge alone such as "No one has threatened, forced, enticed or no promises have been made to me into electing this mode of trial."

MINUTES OF THE SECOND MEETING OF THE SPECIAL SELECT COMMITTEE (SENATE) APPOINTED TO CONSIDER AND REPORT ON A BILL ENTITLED “THE MISCELLANEOUS PROVISIONS (TRIAL BY JUDGE ALONE) BILL, 2017, HELD IN THE ANR ROBINSON WEST MEETING ROOM, LEVEL 9, TOWER D, THE PORT OF SPAIN INTERNATIONAL WATERFRONT CENTRE, 1A WRIGHTSON ROAD, PORT OF SPAIN ON JUNE 16, 2017

Present were:

Mr. Clarence Rambharat	Chairman
Mr. W. Michael Coppin	Member
Mr. Daniel Dookie	Member
Mr. Gerald Ramdeen	Member
Ms. Sophia Chote, S.C.	Member

Also Present were:

Ms. Jennifer Raffoul	Observer
The Hon. Attorney General, Faris Al-Rawi	Minister in charge of the Bill

Chief Parliamentary Counsel’s Department

Mr. Ian Macintyre, S.C.	Chief Parliamentary Counsel
Ms. Lorraine John	Assistant Parliamentary Counsel

Office of the Attorney General Secretariat

Ms. Farzana Nazir-Mohammed	Legal Officer I
Mr. Brian Caesar	Secretary
Ms. Vahini Jainarine	Assistant Secretary
Ms. Khisha Peterkin	Assistant Secretary
Mrs. Krystle Gittens	Parliamentary Intern

CALL TO ORDER

1.2 The Chairman called the meeting to order at 1:08 p.m. Those present were welcomed.

CONFIRMATION OF MINUTES

2.1 The Chairman went through the Minutes page by page and inquired of Members whether there were any amendments.

2.2 The motion for the confirmation of the Minutes was moved by Mr. Daniel Dookie and seconded by Ms. Sophia Chote.

MATTERS ARISING FROM THE MINUTES

3.2 The Chairman enquired whether there were any matters arising from the Minutes.

- 3.3 **Item 6.2:** The Chairman informed Members that as circulated, the Chief Parliamentary Counsel had submitted the revised version of the Bill to incorporate the suggested amendments indicated by Members at the Committee's previous meeting dated June 14, 2017.
- 3.4 **Item 6.5:** By letter dated June 16, 2017 the Secretariat wrote to Professor Gerard Hutchinson requesting his attendance at the Committee's next meeting dated June 16, 2017 at 1:00 p.m. to assist the Committee in its deliberations on mental disability.
- 3.5 **Item 6.5:** The Chairman informed Members that as requested Professor Gerard Hutchinson will be in attendance of today's meeting and would only be available until 2:00 p.m.

CONTINUATION OF CLAUSE BY CLAUSE ANALYSIS OF THE BILL

- 4.1 At 1:15 p.m. the following Officials from the Chief Parliamentary Counsel's Department, and the Office of the Attorney General were invited to join the meeting to assist the Committee in its deliberations:

CHIEF PARLIAMENTARY COUNSEL'S DEPARTMENT

Mr. Ian Macintyre

Chief Parliamentary Counsel

Ms. Lorraine John

Assistant Chief Parliamentary Counsel

OFFICE OF THE ATTORNEY GENERAL SECRETARIAT

Ms. Farzana Nazir-Mohammed

Legal Officer I

- 4.2 Discussion on the Clause by Clause analysis by the Chief Parliamentary Counsel (CPC) continued, led by the Chief Parliamentary Counsel, Mr. Ian Macintyre S.C.
- 4.3 At 1:38 p.m. Professor Gerard Hutchinson arrived and was invited to assist the Committee in its deliberations. The Committee engaged discussions with Professor Gerard Hutchinson on Clause 3(a)(ii) Section 4(A) subsection 9(a) and Clause 3(a)(ii) Section 4(A) subsection 10(b).
- 4.4 At 2:15 p.m. the Committee thanked Professor Gerard Hutchinson for his attendance and assistance.
- 4.5 CPC continued its presentation on the Bill and the Chairman invited comments from Members of the Committee.

OTHER BUSINESS

- 5.1 The Chairman reminded the Committee of the imminent reporting deadline.
- 5.2 The Chairman informed the Committee that the Report will be presented in the Senate on Tuesday June 20, 2017 as such there was agreement that the Report should be approved via round robin.

- 5.3 The Chairman invited Members and the CPC to review the amendments to the Bill pursuant to Standing Order (S.O.) 67(3) which provides that the Committee shall go through the Bill as provided in S.O.68.
- 5.4 The Chairman advised the Committee that in accordance with S.O. 68, the Chairman is required to:
- i. Propose the Question *‘that the respective clause stand part of the Bill’*;
 - ii. The Committee is then welcomed to share views on each clause and if **amendments are proposed**, the Chairman shall then put the question *‘that the clause be amended as circulated’* and if that question is approved, the Chairman shall put the question that *‘the clause, as amended, now stands part of the Bill’*; and
 - iii. If **no amendments** were proposed, the Chairman shall put the question that *‘the clause now stand part of the Bill’*.
- 5.5 The decisions taken by the Committee of the clause by clause analysis of the Bill is hereto attached at **Appendix I**.

ADJOURNMENT

- 6.1 The Chairman thanked Members for their attendance.
- 6.2 The adjournment was taken at 4:09 p.m.

I certify that these Minutes are true and correct.

Mr. Clarence Rambharat
Chairman

Mr. Brian Caesar
Secretary

June 16, 2017

Appendix 1

Clause No.	Issues Raised	Decision Taken
The Long Title	None	The Long Title Stand part of the Bill
1	None	Clause 1 Stand part of the Bill
2	None	Clause 2 Stand part of the Bill
3 (a)(ii)	The “ <i>aggravating factor</i> ” in section 4A subsection (9)(a) restated as “ <i>evidence of a plan and premeditation</i> ”	Clause 3(a)(ii) Section 4(A) subsection (9)(a) as amended Stand part of the Bill
3 (a)(ii)	The “ <i>aggravating factor</i> ” in section 4A subsection (9)(g) restated as “ <i>the killing of any person doing his public duty including a judicial officer, member of the defense force or protective services, customs officer, immigration officer or postal worker</i> ”	Clause 3(a)(ii) Section 4(A) subsection (9)(g) as amended Stand part of the Bill
3 (a)(ii)	The “ <i>aggravating factor</i> ” in section 4A subsection (10)(b) , CPC to draft from Mental Health Act, deleting age from definition.	Clause 3(a)(ii) Section 4(A) subsection (10) (b) as amended Stand part of the Bill
3 (a)(ii)	The “ <i>aggravating factors</i> ” in section 4A subsection (10)(c) , CPC to note consequential amendments to Criminal Procedure Act.	Clause 3(a)(ii) Section 4(A) subsection (10)(c) as amended Stand part of the Bill
3 (a)(ii)	Section 4A subsection (13) (b) replace by “ <i>an up-to-date mental assessment report from a psychiatrist, including an independent psychiatrist</i> ”	Clause 3(a)(ii) Section 4(A) subsection (13)(b) as amended Stand part of the Bill
3 (a)(ii)	Between Section 4A subsection (14) and (15) insert independent clause “ <i>After three (3) years, there shall be an independent review of the mental assessment report. The independent reviewer must have access to the persons history</i> ”	Clause (a)(ii) Section 4(A) subsection (14) as amended Stand part of the Bill
4 (d)	Section 42B (1) replace “ <i>judgement</i> ” in line seven (7) with the word “ <i>verdict</i> ” and replace the wording “ <i>for the conviction of the</i> ”	Clause 4(d) Section 42B(1) am amended Stand part of the Bill

Clause No.	Issues Raised	Decision Taken
	<i>accused person</i> with <i>for his verdict</i>	
4 (d)	Section 42B (4) replace the words " <i>the acquittal</i> " in line five (5) with the words " <i>his verdict</i> ".	Clause 4(d) Section 42(B) (4) as amended Stand part of the Bill
4 (d)	Section 42B (6) replace the word " <i>judgement</i> " in line two (2) with the words " <i>verdict</i> ".	Clause 4(d) Section 42(B) (6) as amended Stand part of the Bill
4 (d)	Delete Section 42B (7)	Clause 4(d) Section 42(B) (7) as amended Stand part of the Bill
5	None	Stand part of the Bill

APPENDIX IV

Members Attendance

Special Select Committee of the Senate appointed to consider and report a Bill entitled “AN ACT to amend the Offences against the Person Act, Chap. 11:08 and the Criminal Procedure Act, Chap. 12:02 and for Related Matters”

ATTENDANCE REGISTER

Date	14.06.2017		16.06.2017	
Meeting	1 st		2 nd	
Member	Present	Absent / Excused	Present	Absent / Excused
Mr. Clarence Rambharat	√		√	
Mr. W. Michael Coppin	√		√	
Mr. Daniel Dookie	√		√	
Mr. Gerald Ramdeen	√		√	
Ms. Sophia Chote	√		√	