Legal Supplement Part A to the "Trinidad and Tobago Gazette", Vol. 56, No. 72, 13th July, 2017

Second Session Eleventh Parliament Republic of Trinidad and Tobago

REPUBLIC OF TRINIDAD AND TOBAGO

Act No. 10 of 2017

[L.S.]

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

[Assented to 7th July, 2017]

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

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,".

(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. 4:20 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".

Chap.11:08 amended

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 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 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.

(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—

(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 sub-section (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,".

4. The Criminal Procedure Act is amended— Chap. 12:02 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, 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.

(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.

L.N. No. 55 of 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 sub-section (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 sub-section (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 sub-section (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.";

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

(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.....

.....	.....
N*ame of Accused*	*Name of Attorney-at-law*
(BLOCK LETTERS)	(BLOCK LETTERS)
(Signature)	(Signature)
.....	.....
Accused	*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 ".

Application
Chap.12:02

5. (1) This Act applies to an 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.

Passed in the Senate this 22nd day of June, 2017.

B. CAESAR
Clerk of the Senate (Ag.)

Passed in the House of Representatives this 28th day of June, 2017.

J. SAMPSON-MEIGUEL
Clerk of the House

PRINTED BY THE GOVERNMENT PRINTER, CARONI
REPUBLIC OF TRINIDAD AND TOBAGO—2017