

# THE CRIMINAL PROCEDURE (AMENDMENT) BILL, 2009

## **Arrangement of Clauses**

### *Clause*

1. Short title
2. Interpretation
3. Act inconsistent with Constitution
4. Section 37 amended
5. Sections 37B, 37C, 37D, 37E, 37F and 37G inserted
6. Section 38 amended
7. Sections 38A, 38B, 38C, 38D and 38E inserted

# THE CRIMINAL PROCEDURE (AMENDMENT) BILL, 2009

## **Explanatory Note**

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

The main purpose of the Bill is to amend the Criminal Procedure Act, Chap.12:02 (“the Act”), to allow for criminal trials in the High Court without a jury in certain circumstances and for the Court to provide assistance to intimidated witnesses or jurors when giving evidence or deliberating in proceedings, respectively. The Bill will need to be passed with a three-fifths majority in both Houses of Parliament since some of its provisions may breach some of the fundamental human rights and freedoms provided under sections 4 and 5 of the Constitution.

Clause 1 would provide for the short title of this Act, for which this is the Bill.

Clause 2 would provide the interpretation provision.

Clause 3 would provide for this Act to have effect even though some provisions may be inconsistent with sections 4 and 5 of the Constitution.

Clause 4 would amend section 37 of the Act to make the authority of the Court to order a jury for the trial of an accused person to be subject to section 37B, which is one of the new sections to be introduced at clause 5.

Clause 5 would amend the Act to introduce six new sections – sections 37B to 37G.

The proposed section 37B would provide for cases to be tried without a jury where there is a danger of jury tampering. The proposed section 37B(1) would provide that the prosecution may apply to the Judge for the trial to be conducted without a jury

on that ground. Under the proposed section 37B(2), the Judge must give the prosecution and the accused person an opportunity to make representations with respect to the application.

Section 37B(3) proposes that if the Judge is satisfied that the two conditions proposed under sections 37B(4) and 37B(5) are fulfilled, he may make an order that the trial is to be conducted without a jury.

The two conditions proposed at sections 37B(4) and 37B(5) are that there is evidence of a real and present danger that jury tampering would take place and that, notwithstanding any steps (including the provision of police protection) which may reasonably be taken to prevent jury tampering, the likelihood that it would take place would be so substantial as to make it necessary in the interests of justice for the trial to be conducted without a jury.

The proposed section 37B(6) gives examples of instances where there may be evidence of a real and present danger of jury tampering. These would include – where the trial is a retrial and the jury in the previous trial was discharged because jury tampering had taken place; where jury tampering has taken place in previous criminal proceedings involving the accused person; and where there has been intimidation, or attempted intimidation, of any person who is likely to be a witness in the trial.

Clause 5, as indicated above, would also introduce sections 37C to 37G. The proposed section 37C would authorise the Judge to discharge the jury during the trial if it appears to him that jury tampering has taken place. Where the Judge, after considering any representations from the parties to the proceedings, discharges the jury he may order that the trial is to continue without a jury or be terminated where he considers that termination is necessary in the interests of justice.

Under the proposed section 37D, the Judge would be required, where a trial is conducted or continued without a jury and the accused person is convicted, to state the reasons for the conviction.

The proposed section 37E would allow for an appeal to the Court of Appeal from an order of a Judge under section 37B or 37C. Such an order is not to take effect, however, before any appeal made is finally disposed of, withdrawn or abandoned.

The proposed section 37F would confer upon a Judge, in a trial conducted or continued without a jury under section 37B or 37C, the power to determine any question and to make any finding which would have been required to be made by a jury.

The proposed section 37G would provide for legislation which refers to a jury, the verdict of a jury or the finding of a jury to be interpreted, in relation to a trial conducted or continued without a jury under section 37B or 37C, as referring to the Judge, the verdict of the Judge or the finding of the Judge.

Clause 6 would amend section 38 of the Act to allow the prosecution to open the case against the accused person both in a trial conducted with a jury and in a trial conducted without a jury under section 37B.

Clause 7 would introduce five new sections – sections 38A to 38E – to deal with assistance to be given by the Court to intimidated witnesses or jurors when giving evidence or deliberating in proceedings, respectively.

Section 38A(1) proposes that a witness or juror in proceedings under the Act is eligible for assistance if certain conditions exist. Assistance may be given to a witness if the Court is satisfied that the quality of evidence to be given by the witness is likely to be diminished owing to fear on the part of the witness when testifying. Assistance may also be given to a juror if the Court is satisfied that the decision of the juror is likely to be

adversely affected by reason of fear or distress on the part of the juror in connection with adjudicating in the proceedings.

Under the proposed section 38A(2), the Court, in determining whether a witness or juror is eligible for assistance under section 38A(1), must take into account all relevant factors. These include any behaviour towards the witness or juror on the part of the accused, members of the family or associates of the accused or any other person who is likely to be an accused or a witness in the proceedings.

Section 38B(1) proposes that, as a means of assistance to the witness or juror, the Court may give a direction for the exclusion from the court and its precincts of persons specified in the direction during the giving of the witness's evidence or, in the case of a juror, during the hearing of the proceedings.

Under the proposed section 38B(3), the direction for the exclusion of persons from the court should only be given where it appears to the Court that there are reasonable grounds for believing that any person, other than the accused, has sought or will seek to intimidate the witness in connection with testifying in the proceedings or the juror in connection with his deliberations in the proceedings.

Section 38C(1) proposes that a direction under section 38B(1) must be initiated by a party to the proceedings or a juror making an application to the Court in relation to a witness or juror in the proceedings or by the Court raising the issue on its own initiative.

The proposed section 38C(2) makes provision for Rules of Court to be made to cater for, amongst other things, the giving of expert evidence and the manner in which confidential or sensitive information is to be treated in connection with an application for the Court's assistance.

Section 38D proposes that a direction under section 38B(1) would have effect from the time it is made until the conclusion of the witness's evidence or, in the case of a juror, until the conclusion of the hearing of the proceedings. The direction may be discharged earlier, however, if the Court thinks it appropriate in the interests of justice.

The proposed section 38E would provide for the Court to state, in open court, its reasons for giving or discharging a direction made under section 38B(1) or for refusing to give a direction.

# BILL

AN ACT to amend the Criminal Procedure Act, Chap. 12:02

[ , 2009]

## **Preamble**

WHEREAS it is enacted by section 13(1) of the Constitution that an Act of Parliament to which that section applies may expressly declare that it shall have effect even though inconsistent with sections 4 and 5 of the Constitution and, if any Act does so declare, it shall have effect accordingly:

And whereas it is provided in section 13(2) of the Constitution that an Act of Parliament to which that section applies is one the Bill for which has been passed by both Houses of Parliament and at the final vote thereon in each House has been supported by the votes of not less than three-fifths of all the members of that House:

And whereas it is necessary and expedient that the provisions of this Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution:

## **Enactment**

ENACTED by the Parliament of Trinidad and Tobago as follows:

## **Short title**

1. This Act may be cited as the Criminal Procedure (Amendment) Act, 2009.

## **Interpretation Chap. 12:02**

2. In this Act, "the Act" means the Criminal Procedure Act.

**Act inconsistent with Constitution**

3. This Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution.

**Section 37 amended**

4. Section 37 of the Act is amended by inserting after the words “the Court shall”, the words “, subject to section 37B,”.

**Sections 37B, 37C, 37D, 37E, 37F and 37G inserted**

5. The Act is amended by inserting after section 37A, the following sections:

“Trial without a jury where danger of jury tampering

37B.(1) After the accused person has put himself upon the country for trial, the prosecution may apply to the Judge, in accordance with Rules made under section 77, for the trial to be conducted without a jury on the ground that there is a danger of jury tampering.

(2) The Judge shall give the prosecution and the accused person an opportunity to make representations with respect to the application.

(3) If an application under subsection (1) is made and the Judge is satisfied that both conditions referred to in subsections (4) and (5) are fulfilled, he may make an order that the trial is to be conducted without a jury; but if he is not so satisfied he shall refuse the application.

(4) One condition referred to under subsection (3) is that there is evidence of a real and present danger that jury tampering would take place.



(5) The other condition referred to under subsection (3) is that, notwithstanding any steps, including the provision of police protection, which might reasonably be taken to prevent jury tampering, the likelihood that it would take place would be so substantial as to make it necessary in the interests of justice for the trial to be conducted without a jury.

(6) Circumstances in which there may be evidence of a real and present danger of jury tampering include –

- (a) a case where the trial is a retrial and the jury in the previous trial was discharged because jury tampering had taken place;
- (b) a case where jury tampering has taken place in previous criminal proceedings involving the accused person; and
- (c) a case where there has been intimidation, or attempted intimidation, of any person who is likely to be a witness in the trial.

Discharge of jury during trial because of jury tampering

37C.(1) A Judge may, during the trial of an accused person, discharge the jury if it appears to him that jury tampering has taken place.

(2) Before discharging a jury under

subsection (1), the Judge shall inform the parties to the proceedings –

- (a) that he is minded to discharge the jury;
- (b) of the grounds on which he is so minded; and
- (c) that they may make representations regarding the intended discharge.

(3) Where the Judge, after considering any representations made under subsection (2)(c), discharges a jury, he may make an order, subject to subsection (4), that the trial is to continue without a jury if he is satisfied that –

- (a) jury tampering has taken place; and
- (b) to continue the trial without a jury would be fair to the accused person.

(4) The Judge shall terminate the trial where he considers that it is necessary in the interests of justice for the trial to be terminated.

(5) Nothing in this section affects the application of section 37B in relation to any new trial which takes place following the termination of the trial.

Court to give reasons for conviction

37D.(1) Where a trial is conducted or continued without a jury under section 37B or 37C, respectively, and the Judge convicts the accused person, the Judge shall give a judgment which

states the reasons for the conviction at, or as soon as practicable after, the time of conviction.

(2) The date of the judgment referred to in subsection (1) shall be deemed to be the date of conviction of the accused person.

Appeals

37E.(1) An appeal shall lie to the Court of Appeal from an order or decision of a Judge under section 37B or 37C.

(2) An appeal under subsection (1) shall be brought only with the leave of the Judge or the Court of Appeal.

(3) An order from which an appeal under this section lies is not to take effect –

- (a) before the expiration of the period for bringing an appeal under this section; or
- (b) if such an appeal is brought, before the appeal is finally disposed of, withdrawn or abandoned.

(4) On the termination of the hearing of an appeal under this section, the Court of Appeal may confirm or revoke the order.

Judge to have powers of jury in trials under section 37B or 37C

37F. Where a trial is conducted or continued without a jury under section 37B or 37C, the Judge shall have the power which he would have had if the trial had been conducted with a jury as well as the power to determine any question and to make any finding which would have been

required to be made by a jury.

Reference to a jury to be read as reference to a Judge in trials under section 37B or 37C

37G. Except where the context otherwise requires, a reference in written law to a jury, the verdict of a jury or the finding of a jury is to be read, in relation to a trial conducted or continued under section 37B or 37C, as a reference to the Judge, the verdict of the Judge or the finding of the Judge.”.

**Section 38 amended**

6. Section 38 of the Act is amended by inserting after the words “have been sworn,” the words “or after the Judge has made an order that the trial is to be conducted without a jury under section 37B,”.

**Sections 38A, 38B, 38C, 38D and 38E inserted**

7. The Act is amended by inserting after section 38, the following sections:

“Assistance to intimidated witnesses or jurors

38A.(1) A witness, other than the accused person, or a juror in criminal proceedings under this Act is eligible for assistance by virtue of this subsection if the Court is satisfied that –

- (a) the quality of evidence given by the witness is likely to be diminished by reason of fear or distress on the part of the witness in connection with testifying in the proceedings;
- or
- (b) the decision of a juror is likely to be adversely affected by

reason of fear or distress on the part of the juror in connection with adjudicating in the proceedings.

(2) In determining whether a witness or a juror falls within subsection (1), the Court shall take into account all relevant factors, including –

(a) any behaviour towards the witness or juror on the part of –

–

- (i) the accused person;
- (ii) members of the family or associates of the accused person; or
- (iii) any other person who is likely to be an accused person or a witness in the proceedings;

(b) any views expressed by the witness or juror in support of section 38A(1)(a) or (b), respectively;

(c) confidential or sensitive information divulged in the proceedings; or

(d) expert evidence tendered.

Direction for  
exclusion of  
persons  
from court

38B.(1) As a means of assistance to the witness or juror under section 38A(1), the Court may give a direction for the exclusion from the court and its precincts, during the giving of the

witness's evidence or, in the case of a juror, the hearing of the proceedings, of any person specified in the direction.

(2) The persons who may be excluded under subsection (1) shall not include –

- (a) the accused person;
- (b) legal representatives acting in the proceedings; or
- (c) any interpreter or other person appointed, in pursuance of the direction or otherwise, to assist the witness.

(3) The direction given under subsection (1) may only provide for the exclusion of persons under this section where it appears to the Court that there are reasonable grounds for believing that any person other than the accused person has sought, or will seek, to intimidate the witness in connection with testifying in the proceedings or the juror in connection with adjudicating in the proceedings.

(4) Where it appears to the Court that there are no reasonable grounds under subsection (3), the Court shall refuse to give a direction for the exclusion of persons from the court.

Application

38C(1). In criminal proceedings under this Act, section 38B(1) shall apply where –

- (a) a party to the proceedings or a juror makes an application

for the Court to give a direction under that section in relation to a witness in the proceedings, other than the accused person, or a juror; or

(b) the Court of its own motion raises the issue whether such a direction should be given.

(2) Rules may be made under section

77 for –

(a) uncontested applications under subsection (1)(a) to be determined by the Court without a hearing;

(b) preventing the renewal of an unsuccessful application for a direction except where there has been a material change of circumstances;

(c) expert evidence to be given in connection with an application for or for discharging a direction under subsection (1) or section 38D, respectively; or

(d) the manner in which confidential or sensitive information is to be treated in connection with an application and in particular as to its being disclosed to, or withheld

from, a party to the proceedings.

Duration of direction

38D. The direction given under section 38B(1) shall have binding effect from the time it is made to the time of the conclusion of the witness's evidence or, in the case of a juror, the hearing of the proceedings, or may be discharged at such earlier time as it appears to the Court to be in the interests of justice to do so.

Court to state reasons for direction

38E. The Court shall state in open court its reasons for giving or discharging a direction under section 38B(1) or 38D, respectively, or for refusing to give a direction under section 38B(4).”.

Passed in the House of Representatives this            day of            , 2009.

*Clerk of the House*

IT IS HEREBY CERTIFIED that this Act is one the Bill for which has been passed by the House of Representatives and at the final vote thereon in the House has been supported by the votes of not less than three-fifths of all the members of the House, that is to say by the votes of            members of the House.

*Clerk of the House*

I confirm the above.

*Speaker*



Passed in the Senate this                    day of                    , 2009.

*Clerk of the Senate*

IT IS HEREBY CERTIFIED that this Act is one the Bill for which has been passed by the Senate and at the final vote thereon in the Senate has been supported by the votes of not less than three-fifths of all the members of the Senate, that is to say by the votes of                    members of the Senate.

*Clerk of the Senate*

I confirm the above.

*President of the Senate*