

*Legal Supplement Part C to the "Trinidad and Tobago Gazette", Vol. 62,
No. 63, 25th April, 2023*

No. 1 of 2023

Third Session Twelfth Parliament Republic of
Trinidad and Tobago

SENATE

BILL

AN ACT to amend the Jury Act, Chap. 6:53 and the
Criminal Procedure Act, Chap. 12:02 and for
related matters

THE MISCELLANEOUS PROVISIONS (TRIAL BY
JUDGE ALONE) BILL, 2023

Explanatory Note

(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 Jury Act, Chap. 6:53 and the Criminal Procedure Act, Chap. 12:02 and for related matters.

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 3 of the Bill would amend the Jury Act, Chap. 6:53, as follows:

- (a) in section 2, by repealing the definition of “special juror”;
- (b) in section 7, by deleting the words “Magistrates and their clerks:” and substituting the words “Judicial officers referred to in the Second Schedule to the Judicial and Legal Service Act and their clerks”;
- (c) in section 7A(b), by deleting sub-paragraph (ii) and substituting the following sub-paragraph:
 - “(ii) a Judicial officer referred to in the Second Schedule to the Judicial and Legal Service Act or his clerk;”;
- (d) by repealing section 8 which provides for the qualifications of special jurors;
- (e) in section 9, by deleting the words “if that person is qualified to serve as a juror, state in the prescribed manner whether that person is qualified as a special juror in accordance with section 8 and the nature of his qualifications or experience, as the case may be” and substituting the words “state in the prescribed manner whether that person is qualified to serve as a juror”;
- (f) by repealing section 11(2) that provides for the Form of the List for special jurors;

- (g) in section 15(2), by deleting the words “(except in cases where a special jury is struck)”;
- (h) in section 18(1), by deleting the words “; but this exemption shall not apply to any trial by a special jury”;
- (i) in section 19—
 - (i) in subsection (1), by deleting the words “twelve jurors” and substituting the words “nine jurors” which would reduce the panel of jurors in trials for murder or treason from twelve jurors to nine jurors; and
 - (ii) in subsection (2), by deleting the words “nine jurors” and substituting the words “six jurors” which would reduce the panel of jurors in trials other than for murder or treason, from nine jurors to six jurors;
- (j) by repealing sections 29 to 33 that provide for special juries;
- (k) in section 34, by deleting the words “other than jurors summoned on special juries”;
- (l) by repealing section 35 that provides for allowances to special jurors;
- (m) in section 36, by deleting all the words from “; but where a special jury is struck” to the end; and
- (n) in the Schedule—
 - (i) in Form A, by deleting the column titled “Whether qualified as Special Juror”; and
 - (ii) in Form D, “Qualifications for a Juror”, by deleting the column titled “Whether qualified as Special Juror”.

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

- (a) in section 6—
 - (i) by repealing and substituting subsection (1) 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 to be tried by a Judge alone unless he elects to be tried by a Judge and jury, and the Courts so directs in the interest of justice; the proposed new subsection (1A) would allow for an accused person to be tried by a Judge and lay assessors in accordance with section 6C, if the Court considers it necessary in the interest of justice;

- (ii) by repealing and substituting subsection (2) to allow the Judge, at the first hearing after an indictment has been filed, to inform the accused person that he may elect to be tried by a judge and jury unless he intends to enter a plea of guilty;
 - (iii) in subsection (4), by deleting the words “a Judge alone” wherever they occur and substituting the words “a Judge and jury”;
 - (iv) in subsection (5), by deleting the words “a Judge alone” wherever they occur and substituting the words “a Judge and jury”;
 - (v) in subsection (6), by deleting the words “a Judge alone” wherever they occur and substituting the words “a Judge and jury”;
 - (vi) by repealing and substituting subsection (7) to provide for the procedure for an accused person to subsequently apply for a trial by a Judge alone after he initially elected for a trial by a Judge and jury;
 - (vii) by repealing and substituting subsection (9)(b) to allow for the Court to make a subsequent order for a trial by Judge and jury;
- (b) by inserting after section 6B, new sections 6C to 6L to provide for lay assessors as follows:
- (i) the proposed new section 6C would provide for the High Court to appoint

lay assessors in respect of indictable offences, except those punishable with death; particularly indictable offences, including fraud, financial crimes, money laundering offences, financing of terrorism; the Attorney General would be empowered to amend the list of offences by Order, subject to affirmative resolution of Parliament;

- (ii) the proposed new section 6D would provide for the qualifications of lay assessors who must be between the ages of eighteen and seventy years; ordinarily resident in Trinidad and Tobago; literate in the English language; experienced or qualified in the administration of justice or possessing skills relevant to the trial and these qualifications would be prescribed in Rules;
- (iii) the proposed new section 6E would provide for the disqualification of lay assessors, including on the grounds of previous convictions, mental or physical incapacity or bankruptcy;
- (iv) the proposed new section 6F would provide for the categories of persons who are excepted from being lay assessors, including Members of Parliament, Judicial officers, Justices of the Peace, Ministers of Religion, diplomats, school teachers as well as, law enforcement officers;
- (v) the proposed new section 6G would provide for persons who may wish to be excused from serving as lay assessors;
- (vi) the proposed new section 6H would provide for lay assessors to take an oath or make an affirmation before assuming duty which is to give a verdict based on the evidence presented; a lay assessor would be a member of the Court except in certain circumstances where the Judge decides that he should sit

alone for example to determine the admissibility of evidence or other questions of law; this section would provide for a lay assessor to provide the Judge with written reasons for his decision;

- (vii) the proposed new section 6I would provide for the Judge to give reasons for his decision;
 - (viii) the proposed new section 6J would provide for the directions the Judge may give in the event of the death or incapacity of a lay assessor;
 - (ix) the proposed new section 6K would provide that the costs and expenses of lay assessors would be a charge on the Consolidated Fund; and
 - (x) the proposed new section 6L would empower the Rules Committee to make Rules regulating the selection, appointment, qualification, exemption and training of lay assessors;
- (c) in section 37, by providing that a Court shall order a Judge alone 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 and jury; and
- (d) by inserting after section 77, a new section 78, to empower the Attorney General to make Regulations to give effect to the purposes of the Act, subject to negative resolution of Parliament.

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.

BILL

AN ACT to amend the Jury Act, Chap. 6:53 and the
Criminal Procedure Act, Chap. 12:02 and for
related matters

[, 2023]

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

1. This Act may be cited as the Short title
Miscellaneous Provisions (Trial By Judge Alone) Act, 2023.
2. This Act shall come into operation on such date as Commencement
is fixed by the President by Proclamation.

3. The Jury Act is amended—

- (a) in section 2, by repealing the definition of “special juror”;
- (b) in section 7—
 - (i) by deleting the words “Magistrates and their clerks:” and substituting the words “Judicial officers referred to in the Second Schedule to the Judicial and Legal Service Act and their clerks;” and
 - (ii) by deleting the words “Officers of Courts of Justice;”;
- (c) in section 7A (b), by deleting sub-paragraph (ii) and substituting the following sub-paragraph:
 - “(ii) a Judicial officer referred to in the Second Schedule to the Judicial and Legal Service Act or his clerk;”;
- (d) by repealing section 8;
- (e) in section 9, by deleting the words “if that person is qualified to serve as a juror, state in the prescribed manner whether that person is qualified as a special juror in accordance with section 8 and the nature of his qualifications or experience, as the case may be” and substituting the words “state in the prescribed manner whether that person is qualified to serve as a juror”;
- (f) by repealing section 11(2);
- (g) in section 15(2), by deleting the words “(except in cases where a special jury is struck)”;
- (h) in section 18(1), by deleting the words “; but this exemption shall not apply to any trial by a special jury”;

- (i) in section 19—
 - (i) in subsection (1), by deleting the words “twelve jurors” and substituting the words “nine jurors”; and
 - (ii) in subsection (2), by deleting the words “nine jurors” and substituting the words “six jurors”;
- (j) by repealing sections 29 to 33;
- (k) in section 34, by deleting the words “other than jurors summoned on special juries”;
- (l) by repealing section 35;
- (m) in section 36, by deleting all the words from “; but where a special jury is struck” to the end; and
- (n) in the Schedule—
 - (iii) in Form A, by deleting the column titled “Whether qualified as Special Juror”; and
 - (iv) in Form D, “Qualifications for a Juror”, by deleting the column titled “Whether qualified as Special Juror”.

4. The Criminal Procedure Act is amended—

Chap. 12:02
amended

- (a) section 6—
 - (i) by repealing subsection (1) and substituting the following subsections:
 - “(1) A person against whom an indictment has been filed shall, subject to the provisions of this Act, be tried by a Judge alone, unless he elects to be tried before a Judge and jury and the Court so directs in the interest of justice.

(1A) Notwithstanding subsection (1), a person against whom an indictment has been filed may be tried by a Judge and lay assessors to be appointed in accordance with section 6C, if the Court considers it necessary in the interest of justice.”;

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

“(2) Subject to subsection (1), 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, unless the accused person indicates an intention to enter a plea of guilty.”;

- (iii) in subsection (4), by deleting the words “a Judge alone” wherever they occur and substituting the words “a Judge and jury”;
- (iv) in subsection (5), by deleting the words “a Judge alone” wherever they occur and substituting the words “a Judge and jury”;
- (v) in subsection (6), by deleting the words “a Judge alone” wherever they occur and substituting the words “a Judge and jury”;

(vi) by repealing subsection (7) and substituting the following subsection:

“(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 by a Judge alone; or

(b) 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, 2023—

(i) 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 and jury; and subject to subsection (8), apply to the Court for a trial by a Judge and jury; or

(ii) the accused person may, subject to subsection (8), apply to the Court for a trial by a Judge and jury.”; and

(vii) by repealing subsection (9)(b) and substituting the following:

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

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

“LAY ASSESSORS

Appointment
of lay
assessors

6C. (1) For the purposes of sections 6C to 6H, “lay assessor” means a person qualified to serve as a lay assessor pursuant to section 6D.

(2) The High Court may in respect of any indictable offence, except any offence punishable with death, and in particular in an indictable offence—

- (i) involving fraud;
 - (ii) under the Proceeds of Crime Act;
 - (iii) misbehaviour in public office;
 - (iv) perverting the course of justice:
 - (v) under the Anti-Terrorism Act;
 - (vi) under the Anti-Gang Act;
 - (vii) under the Trafficking in Persons Act;
 - (viii) under the Economic Sanctions Act or Orders made thereunder as they relate to proliferation financing;
 - (ix) under Part VII of the Securities Act;
 - (x) under the Insurance Act, 2018;
 - (xi) under the Integrity in Public Life Act;
 - (xii) under the Public Procurement and Disposal of Public Property Act;
 - (xiii) under the Gambling (Gaming and Betting) Control Act, 2021;
- Chap. 11:27
- Chap. 12:07
- Act No. 1 of 2018
- Chap. 12:10
- Chap. 81:05
- Chap. 83:02
- Act No. 4 of 2018
- Chap. 22:01
- Act No. 1 of 2015
- Act No. 8 of 2021

- (xiv) involving conspiracy to defraud the State; or
- (xv) under any other written law in relation to the prevention of money laundering, combating the financing of terrorism, proliferation financing,

order lay assessors to be appointed for the trial.

(3) The Attorney General may by Order, subject to affirmative resolution of Parliament, amend the list of offences referred to in subsection (2).

Qualifications
as a lay
assessor

6D. (1) A person is qualified to be a lay assessor who—

- (a) is over the age of eighteen years and under the age of seventy years;
- (b) is ordinarily resident in Trinidad and Tobago;
- (c) was born in Trinidad and Tobago or, not being so born, has resided in Trinidad and Tobago for two years or more;
- (d) is able to read and write the English language and understand the same when spoken; and
- (e) possesses—
 - (i) experience in the administration of justice; or

- (ii) qualifications, experience or skill in any matter which may be considered at the trial,

as prescribed in the Rules made pursuant to section 6L.

(2) In all cases, the Court may appoint at least one lay assessor but no more than five lay assessors.

Disqualifications
of a lay
assessor

6E. A person is disqualified from being a lay assessor who—

- (a) has been convicted of an arrestable offence or any indictable offence not being an arrestable offence involving dishonesty in respect of which indictable offence such person has been sentenced to imprisonment;
- (b) is of unsound mind, deaf, or blind or afflicted with any other permanent infirmity of body or mind; or
- (c) is bankrupt, or has entered into a deed of arrangement with his creditors.

Exceptions

6F. (1) The following persons are excepted from service as lay assessors:

- (a) Members of Parliament;

Chap. 6:01

- (b) Judges of the Supreme Court and their clerks;
- (c) Judicial officers referred to in the Second Schedule to the Judicial and Legal Service Act and their clerks;
- (d) Justices of the Peace;
- (e) Ministers of Religion;
- (f) Mayors and Deputy Mayors;
- (g) Consuls and Vice-Consuls;
- (h) Schoolteachers;
- (i) law enforcement officers;
- (j) Members of the Fire Service; and
- (k) Members of the air crew of any company, firm or other organisation operating an airline service under an agreement with the Government who hold licences issued by the Director of Civil Aviation.

(2) For the purposes of this section, “law enforcement officer” means an officer or member of the following authorities:

- (a) the Police Service established under the Police Service Act;

Chap. 15:01

- Chap. 78:01 (b) the Customs and Excise Division established under the Customs Act;
- Chap. 75:01 (c) the Board of Inland Revenue established under the Income Tax Act;
- Chap. 14:01 (d) the Defence Force established under the Defence Act;
- Chap. 13:02 (e) the Prison Service established under the Prison Service Act;
- Chap. 15:02 (f) a constable as defined under the Supplemental Police Act;
- Chap. 15:03 (g) Special Reserve Police established under the Special Reserve Police Act;
- Chap. 25:04 (h) the Municipal Police Service established under the Municipal Corporations Act;
- Chap. 15:05 (i) the Police Complaints Authority established under the Police Complaints Authority Act;
- Chap. 15:06 (j) the Strategic Services Agency established under the Strategic Services Agency Act; and

(k) any other agency of the State in which investigative powers, similar to those exercisable by a police officer appointed under the Police Service Act, are lawfully vested.

Chap. 15:01

Excuse from serving as a lay assessor

6G. (1) A person qualified to be a lay assessor is entitled, if he so wishes, to be excused from serving as a lay assessor if he is—

(a) more than sixty-five years of age; or

(b) the spouse of—

(i) a Judge of the Supreme Court;

(ii) a Judicial officer referred to in the Second Schedule to the Judicial and Legal Service Act or his clerk;

(iii) a Justice of the Peace; or

(iv) an Attorney-at-law or his Clerk.

(2) For the avoidance of doubt, the Court may appoint an Attorney-at-law or his clerk as a lay assessor.

Role of assessors

6H. (1) No lay assessor shall hear any evidence unless he first takes an oath or, as the case may be, makes an affirmation,

administered by the Judge, that he will, on the evidence placed before him, give a true verdict upon the issues to be tried.

(2) A lay assessor who takes an oath or makes an affirmation under subsection (1) shall be a member of the Court except—

(a) where the Judge is of the opinion that it would be in the interest of justice that the assessor or the assessors assisting him do not take part in any decision upon the question whether evidence of any confession or other statement made by an accused is admissible as evidence against him, the Judge alone shall decide upon such question, and he may for this purpose sit alone; or

(b) the Judge alone shall decide upon any other question of law or upon any question whether any matter constitutes a question of law or a question of fact, and he may for this purpose sit alone.

(3) A lay assessor shall provide the Judge with written reasons for his decision.

Judge to give
reasons for
decisions

6I. (1) A Judge presiding at a criminal trial in the High Court shall—

- (a) where he decides any question of law, including any question referred to in section 6H(2)(b), whether any matter constitutes a question of law or a question of fact, give the reasons for his decision;
- (b) whether he sits with or without lay assessors, give the reasons for the decision or finding of the Court upon any question of fact;
- (c) where he sits with lay assessors, give the reasons for the decision or finding of the Court upon the question referred to in section 6H(2)(a); or
- (d) where he sits with lay assessors and there is a difference of opinion upon any question of fact or upon the question referred to in section 6H(2)(a), give the reasons for the decision or finding of the member of the Court who is in the minority.

(2) For the avoidance of doubt, a Judge shall not be bound to conform to the opinion of a lay assessor.

Death or
incapacity of
lay assessor

6J. (1) If a lay assessor dies or, in the opinion of the Judge, becomes unable to act as a lay assessor at any time during a trial, the Judge may direct—

(a) that the trial proceed before the remaining member or members of the Court; or

(b) that the trial start *de novo*, and for that purpose summon a lay assessor in the place of the assessor who has died or has become unable to act as a lay assessor.

(2) Where the Judge acts under subsection (1)(b), the plea already recorded shall stand.

Costs of lay
assessors

6K. The fees and expenses in relation to lay assessors shall be a charge on the Consolidated Fund.

Rules
Committee to
make Rules
for lay
assessors

6L. The Rules Committee may make Rules, subject to negative resolution of Parliament, to generally regulate lay assessors and in particular to provide for the selection, appointment, qualification, exemption and training of lay assessors.”;

- (c) in section 37, by deleting the words “order a jury for the trial of the accused person” and substituting the words “order a Judge alone trial of the accused person”;
- (d) by inserting after section 77, the following new section:

“Regulations 78. The Attorney General may make Regulations, subject to negative resolution of Parliament, to give effect to the purposes of this Act.”;

- (e) in the First Schedule—

- (i) in Form 31, by deleting the words “by a Judge alone” and substituting the words “before a Judge and jury” wherever they occur;

- (ii) in Form 32, by deleting the words “by a Judge alone” and substituting the words “before a Judge and jury” wherever they occur.

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 day of ,
2023.

Clerk of the Senate

I confirm the above.

President of the Senate

No. 1 of 2023

THIRD SESSION
TWELFTH PARLIAMENT
REPUBLIC OF
TRINIDAD AND TOBAGO

BILL

AN ACT to amend the Jury Act, Chap.
6:53 and the Criminal Procedure Act,
Chap. 12:02 and for related matters

Received and read the

First time

Second time

Third time