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No. 2 of 2017

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Second Session Eleventh Parliament Republic of  
Trinidad and Tobago

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SENATE

**BILL**

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

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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 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 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
3. Chap. 11:08 amended
4. Chap. 12:02 amended
5. Transitional Chap. 12:02

# **BILL**

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

*[ , 2017]*

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

1. This Act may be cited as the Miscellaneous Provisions Short title (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.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 “recorded” 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

(ii) in subsection (7), by inserting after the words “the finding of the jury” the words “or the Judge as the case may be,”;

(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:

<sup>“Mode of trial</sup> 6. (1) Every person committed for trial shall be tried on an indictment and, 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) Where an accused person 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 the Court is satisfied that—

- (a) the accused person has sought and received advice from an Attorney-at-law in relation to a trial by a Judge alone;
- (b) in the case of a joint trial, all other accused persons have elected to be tried by a Judge alone; and
- (c) 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.

(3) Where the Court makes an order pursuant to subsection (2), an accused shall not subsequently apply for a trial by jury.

(4) Where an accused person elects to be tried by a Judge and jury, he shall not subsequently apply to 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, the Judge shall give a written judgment stating

the reasons for the conviction or acquittal of the accused person at the time of conviction or acquittal, or as soon as reasonably practicable thereafter.

(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.”;

(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,”;

(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.”;

(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.”;

(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,”; and

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

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



No. 2 of 2017

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SECOND SESSION  
**ELEVENTH PARLIAMENT**  
REPUBLIC OF  
TRINIDAD AND TOBAGO

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**BILL**

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

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Received and read the

First time .....

Second time .....

Third time .....

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