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No. 13 of 2021

Second Session Twelfth Parliament Republic of
Trinidad and Tobago

HOUSE OF REPRESENTATIVES

BILL

AN ACT to amend the Interpretation Act, Chap. 3:01, the
Supreme Court of Judicature Act, Chap. 4:01, the
Offences Against the Person Act, Chap. 11:08, the
Criminal Procedure Act, Chap. 12:02 and for other
related matters.

THE MISCELLANEOUS PROVISIONS
(CRIMINAL PROCEEDINGS) BILL, 2021

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 Interpretation Act, Chap. 3:01, the Supreme Court of Judicature Act, Chap. 4:01, the Offences Against the Person Act, Chap. 11:08, and the Criminal Procedure Act, Chap. 12:02. The Bill contains six clauses.

Clause 1 of the Bill seeks to provide for the short title of the Act for which this is the Bill.

Clause 2 of the Bill would provide that the Act shall come into operation on such date as is fixed by the President by Proclamation.

Clause 3 of the Bill seeks to amend the Interpretation Act to provide that acquittals for offences specified in the proposed Schedule 1 of the Supreme Court of Judicature Act would not be a bar to prosecution for the same offence where there is new and compelling evidence or a tainted acquittal and it is in the interest of justice that there be a retrial.

Clause 4 of the Bill seeks to amend the Supreme Court of Judicature Act to insert a new Part IIIC to provide for the Director of Public Prosecutions to make an application to the Court of Appeal to quash acquittals in relation to offences specified in the proposed Schedule 1.

Clause 5 of the Bill seeks to amend the Offences Against the Person Act to abolish the year and a day rule for offences involving death.

Clause 6 of the Bill seeks to amend the Criminal Procedure Act to provide that in a plea of *autrefois acquit* in relation to an offence listed in Schedule 1 of the Supreme Court of Judicature Act, it shall not be sufficient for the defendant to state that he had been lawfully acquitted of that offence for which he is now indicted if the Director of Public Prosecutions has advised that the acquittal would not be a bar to the retrial of that defendant.

THE MISCELLANEOUS PROVISIONS
(CRIMINAL PROCEEDINGS) BILL, 2021

Arrangement of Clauses

Clause

1. Short title
2. Commencement
3. Chap. 3:01 amended
4. Chap. 4:01 amended
5. Chap. 11:08 amended
6. Chap. 12:02 amended

BILL

AN ACT to amend the Interpretation Act, Chap. 3:01, the Supreme Court of Judicature Act, Chap. 4:01, the Offences Against the Person Act, Chap. 11:08, the Criminal Procedure Act, Chap. 12:02 and for other related matters.

[, 2022]

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

- Short title **1.** This Act may be cited as the Miscellaneous Provisions (Criminal Proceedings) Act, 2021.
- Commencement **2.** This Act comes into operation on such date as is fixed by the President by Proclamation.
- Chap. 3:01 amended **3.** The Interpretation Act is amended in section 62 by inserting after subsection (1)(a), the following paragraph:
- “(aa) Notwithstanding paragraph (a), an acquittal upon a prosecution for an offence listed in Schedule 1 of the Supreme Court of Judicature Act is not a bar to prosecution for the same offence where—
- (i) there is new and compelling evidence; or
- (ii) the acquittal was a tainted acquittal,
- and it is in the interest of justice that there be a retrial.”.
- Chap. 4:01
- Chap. 4:01 amended **4.** The Supreme Court of Judicature Act is amended—
- (a) by inserting after section 65R the following new Part:
- “PART IIIC
- APPLICATIONS TO QUASH AQUITTALS BY THE
- DIRECTOR OF PUBLIC PROSECUTIONS
- Interpretation 65S. In this Part—
- “administration of justice offence” includes any of the following offences:
- (a) an offence of perjury contrary to the Perjury Act;
- Chap. 11:14

Chap. 11:01

(b) an offence of perverting the course of justice contrary to the Criminal Offences Act;

(c) an offence of obstructing justice contrary to the Criminal Offences Act;

“new and compelling evidence” means evidence that—

(a) was not adduced in the proceedings in which the person was acquitted;

(b) could not have been adduced in the proceedings with the exercise of due diligence;

(c) is reliable;

(d) is substantial; and

(e) is highly probative of the case against the acquitted person;

“tainted acquittal” means an acquittal where—

(a) the acquitted person or another person has been convicted of an administration of justice offence in connection with the trial resulting in the acquittal; and

(b) there is a real possibility that, but for the commission of the administration of justice offence, the acquitted person would not have been acquitted.

Application
of Part

65T. (1) This Part applies to an offence which has been committed after the commencement of this Part.

(2) An application made under section 65V shall not be made if the acquitted person was acquitted of the offence charged but was convicted of a lesser offence arising out of the same set of circumstances that gave rise to the acquittal, unless the acquittal was a tainted acquittal.

Director of
Public
Prosecutions
to advise on
retrial of
acquitted
person

65U. (1) Where the Commissioner of Police intends to carry out an investigation into the commission of an offence listed in Schedule 1 by an acquitted person in relation to the retrial of that person for the same offence, he shall apply in writing to the Director of Public Prosecutions before commencing any investigation.

(2) The Commissioner of Police may make an application under subsection (1) where he is satisfied that the relevant evidence for the retrial of the acquitted person for the same offence has been obtained or is likely to be obtained as a result of the investigation.

(3) Subject to subsection (4), on an application made under subsection (1), the Director of Public Prosecutions shall—

- (a) advise whether, in his opinion, the acquittal is a bar to the retrial of the acquitted person for the same offence; and
- (b) where he has advised that the acquittal is not a bar to the retrial, give his written consent to the investigation.

(4) The Director of Public Prosecutions shall give his consent under subsection (3)(b) where he is satisfied that—

- (a) there is, or there is likely to be as a result of the investigation, new and compelling evidence to warrant the conduct of the investigation; and
- (b) it is in the interest of justice for the investigation to proceed.

(5) Notwithstanding subsection (1), an investigation may proceed without prior consent of the Director of Public Prosecutions if authorised by an officer not below the rank of Senior Superintendent where—

- (a) urgent action is required to prevent the investigation from being substantially and irrevocably prejudiced; and
- (b) it is not reasonably practicable in the circumstances to obtain the prior written consent of the Director of Public Prosecutions before commencing the investigation.

(6) A Senior Superintendent may authorise the investigation under subsection (5) where—

- (a) he is satisfied that new and compelling evidence has been obtained which would be relevant to a retrial of an acquitted person; or

- (b) he has reasonable grounds to believe that the new and compelling evidence is likely to be obtained as a result of the investigation.

(7) An authorisation by the Senior Superintendent under subsection (6) shall be recorded in writing by him as soon as is reasonably practicable.

(8) The Director of Public Prosecutions shall be informed, as soon as is reasonably practicable, of—

- (a) any authorisation given under subsection (6); and
- (b) all actions taken by the police since that authorisation,

and the investigation shall not proceed further without the written consent of the Director of Public Prosecutions.

(9) For the purpose of this section—

“investigation” includes—

- (a) the questioning, search or arrest of the acquitted person;
- (b) the issue of a warrant for the arrest of the acquitted person;
- (c) the search of property or premises owned or occupied by the acquitted person;
- (d) the seizure of property owned by the acquitted person; or
- (e) the taking of fingerprints or non-intimate samples from the acquitted person;

“non-intimate sample” has the meaning assigned to it under the Administration of Justice (Deoxyribonucleic Acid) Act.

Chap. 5:34

Right of
Director of
Public
Prosecutions
to apply to
quash
acquittal

65V. (1) The Director of Public Prosecutions may apply to the Court of Appeal to quash an acquittal of a trial court in proceedings on—

- (a) indictment;
- (b) appeal against a conviction; or
- (c) appeal from a decision on appeal under paragraph (b),

for an offence listed in Schedule 1 where there is new and compelling evidence, or the acquittal is a tainted acquittal, and it is in the interest of justice to quash the acquittal.

(2) An application to quash an acquittal may not be made under subsection (1) unless—

- (a) the acquitted person has been charged with the offence for which he has been acquitted; or
- (b) a warrant has been issued for the arrest of the acquitted person in relation to the offence for which he has been acquitted.

(3) For the purpose of this section, an offence for which a person has been acquitted includes—

- (a) an offence listed in Schedule 1 with which the person was charged that was joined in the same information as that in which the offence of which the person was acquitted was charged; and

- (b) an offence listed in Schedule 1 with which the person could have been convicted at the trial of the offence for which the person was acquitted.

Power of
Court on
application
for retrial
on acquittal

65W. (1) On an application made under section 65V, the Court of Appeal may—

- (a) dismiss the application; or
- (b) allow the application, set aside the verdict and order a retrial if it is satisfied that—
 - (i) there is new and compelling evidence against the acquitted person in relation to the offence; or
 - (ii) there is a tainted acquittal as a result of the commission of an administration of justice offence; and
 - (iii) in all the circumstances it would be in the interest of justice to proceed with the retrial of the acquitted person.

(2) When considering whether it would be in the interest of justice to set aside the verdict and order a retrial, the Court of Appeal shall have regard to—

- (a) whether, in all the circumstances, a fair trial is likely;
- (b) the length of time since the offence was committed;

- (c) whether, since the previous proceedings and the current proceedings, the prosecutor acted with due diligence and expedition;
- (d) the interests of any victim; and
- (e) any other factor it considers relevant.

(3) Where the Court of Appeal determines that the acquittal is not a bar to the acquitted person being retried for the offence it shall make a declaration to that effect.

Right of
acquitted
person to
be present

65X. (1) Notwithstanding that an acquitted person is in custody, he is, on the hearing of an application under this Part, entitled to be present in Court if he so desires and to be heard on the application.

(2) The power of the Court of Appeal to make an order under this Part may be exercised notwithstanding that the acquitted person is for any reason not present, once he has been given a reasonable opportunity to be present.

Director of
Public
Prosecutions
to make
only one
application

65Y. (1) Subject to subsection (2), the Director of Public Prosecutions shall only make one application under section 65V in respect of an acquitted person.

(2) Where an acquittal obtained from a retrial conducted pursuant to an application under section 65V was tainted by the commission of an administration of justice offence, the Director of Public Prosecutions may make a further application under section 65V.

Director of
Public
Prosecutions
to file
indictment
for retrial

65Z. (1) Subject to subsection (2), where the Court of Appeal orders a retrial pursuant to section 65W(1)(b), the Director of Public Prosecutions shall file the indictment for the retrial within two months of the date of the order.

(2) The Director of Public Prosecutions may, with the leave of the Court of Appeal, file the indictment for retrial after two months have elapsed from the date of the order, if the Court of Appeal is satisfied that—

- (a) the prosecutor has acted with reasonable expedition; and
- (b) there is good and sufficient cause for the retrial despite the lapse of time after the order was made.

(3) Where the Director of Public Prosecutions has not—

- (a) filed the indictment for retrial in the time specified in subsection (1); or
- (b) applied for leave of the Court of Appeal for an extension of time to file the indictment pursuant to subsection (2),

the acquitted person may apply to the Court of Appeal to—

- (i) set aside the order for retrial; and
- (ii) restore the acquittal that was set aside.

(4) Where the Court of Appeal grants an order under subsection (3), the acquitted person shall not be retried for the offence.

Prosecution
not to refer
to tainted
acquittal
and new and
compelling
evidence

65ZA. At the retrial of an acquitted person, the prosecution shall not refer to the fact that, before the making of the order for the retrial of the offence, the Court of Appeal had to be satisfied that—

- (a) there was a tainted acquittal;
or
- (b) there is new and compelling evidence against the acquitted person in relation to the offence.

Restrictions
on
publication

65ZB. (1) A person shall not publish any information in a cause or matter for the purpose of identifying or having the effect of identifying—

- (a) an acquitted person who is the subject of a police investigation referred to in section 65U;
- (b) an acquitted person who is the subject of an application for a retrial under section 65V; or
- (c) an acquitted person who is the subject of an order for retrial or who is being retried following an application under section 65V,

unless the publication is authorised by order of the Court of Appeal or of the Court before which the acquitted person is being retried.

(2) The relevant Court may make an order under this section only if the Court is satisfied that it is in the interest of justice to do so.

(3) Before making an order under this section, the relevant Court shall give the acquitted person a reasonable opportunity to be heard on the application for the order.

(4) The relevant Court may at any time vary or revoke an order under this section.

(5) The prohibition on publication ceases to have effect—

(a) when there is no longer any step that could be taken which would lead to the acquitted person being retried under section 65W; or

(b) where the acquitted person is retried under section 65W at the conclusion of the trial,

whichever is the earliest.

(6) Nothing in this section affects any prohibition of the publication of any matter under any other written law.

(7) A contravention of the prohibition on publication under this section is punishable as contempt of court.

Appeals to
the Judicial
Committee

65ZC. An appeal from a decision of the Court of Appeal under this Part shall lie to the Judicial Committee as of right.

Modified
sections
42 to 65
to apply

65ZD. Where this Part does not make provision for any of the matters provided for in sections 42 to 65, those sections, as suitably modified, shall apply.”;

(b) by inserting after section 97
the following Schedule:

SCHEDULE 1

Section 65U

OFFENCES FOR WHICH AN ACQUITTED PERSON MAY BE RETRIED

- (a) murder;
- (b) treason;
- (c) piracy or hijacking;
- (d) any offence for which death is the penalty fixed by law;
- (e) an offence of misbehaviour in public office;
- (f) a sexual offence under any written law in which the alleged victim is a child;
- Act No. 4 of 2021 (g) an offence under the Anti-Gang Act, 2021, which is punishable by imprisonment for a term of ten years or more;
- Chap. 11:08 (h) an offence under the Offences Against the Person Act which is punishable by imprisonment for a term of ten years or more or an offence under section 48 or 54 of that Act;
- Chap. 11:11 (i) an offence under the Prevention of Corruption Act which is punishable by imprisonment for a term of ten years or more;
- Chap. 11:25 (j) an offence under the Dangerous Drugs Act which is punishable by imprisonment for a term of ten years or more;
- Chap. 11:26 (k) an offence under the Kidnapping Act which is punishable by imprisonment for a term of ten years or more;

SCHEDULE—*CONTINUED*

- Chap. 11:27 (l) an offence under the Proceeds of Crime Act which is punishable by imprisonment for a term of ten years or more;
- Chap. 11:28 (m) an offence under the Sexual Offences Act which is punishable by imprisonment for a term of ten years or more;
- Chap. 12:07 (n) an offence under the Anti-Terrorism Act which is punishable by a term of imprisonment for a term of ten years or more;
- Chap. 12:10 (o) an offence under the Trafficking in Persons Act which is punishable by imprisonment for a term of ten years or more;
- Chap. 16:01 (p) an offence under the Firearms Act, other than section 6(1) or (2) which is punishable by imprisonment for a term of ten years or more.”.

Chap. 11:08
amended

5. The Offences Against the Person Act is amended by inserting after section 3, the following section:

“Abolition of the year and a day rule 3A. (1) The year and a day rule is abolished for offences involving death.

(2) Subsection (1) shall not apply where—

(a) the act or omission which caused the death of a person;
or

(b) the last of the acts or omissions which caused the death of a person,

occurred before the commencement of this section.

(3) For the purpose of this section, the “year and a day rule” means the rule that, for an offence involving death, an act or omission is conclusively presumed not to have caused the death of a person if more than a year and a day have elapsed before the person died.”

6. The Criminal Procedure Act is amended in Chap. 12:02 amended section 33—

(a) by renumbering as section 33(1); and

(b) by inserting after the renumbered subsection (1), the following subsection:

“(2) Notwithstanding subsection (1), in a plea of *autrefois acquit* it shall not be sufficient for the defendant to state that he had been lawfully acquitted of the offence for which he is now indicted where—

(a) that offence is listed in Schedule 1 of the Supreme Court of Judicature Act; and Chap. 4:01

(b) the Director of Public Prosecutions has advised that the acquittal would not be a bar to the retrial of that defendant.”.

Passed in the House of Representatives this day
of , 2022.

Clerk of the House

I confirm the above.

Speaker

Passed in the Senate this day of ,
2022.

Clerk of the Senate

I confirm the above.

President of the Senate

No. 13 of 2021

SECOND SESSION
TWELFTH PARLIAMENT
REPUBLIC OF
TRINIDAD AND TOBAGO

BILL

AN ACT to amend the Interpretation Act, Chap. 3:01, the Supreme Court of Judicature Act, Chap. 4:01, the Offences Against the Person Act, Chap. 11:08, the Criminal Procedure Act, Chap. 12:02 and for other related matters.

Received and read the

First time

Second time

Third time
