2026-05-26

OBJECTS AND REASONS

This Bill would amend

(a) the *Evidence Act*, Cap. 121 to abolish the rule relating to unsworn evidence, make better provision for dealing with adverse witnesses and provide for the use in court of transcripts of electronically recorded evidence; and

(b) the *Criminal Procedure Act*, Cap. 127 to delete sections 6A and 7A which affect, respectively, the right of the jury to determine the fitness of an accused to plead and the circumstances in which the defence of diminished responsibility and insanity may be determined.

Arrangement of Sections

1. Short title

2. Amendment of Cap. 121

3. Commencement of section 72 of Cap. 121

4. Amendment of Cap. 127

5. Transitional

BARBADOS

A Bill entitled

An Act to amend certain enactments to make better provision for the administration of justice in criminal trials.

ENACTED by the Parliament of Barbados as follows:

Short title

1. This Act may be cited as the *Administration of Justice (Miscellaneous Provisions) Act, 2026*.

Amendment of Cap. 121

2. The *Evidence Act*, Cap. 121 is amended

(a) in section 2, by deleting the definition of "evidence";

(b) by deleting sections 22 and 23 and substituting the following:

"Abolition of right of accused to give unsworn evidence

22.(1) Subject to subsections (2) and (3), in criminal proceedings an accused shall not be entitled to make a statement without being sworn.

(2) Nothing in subsection (1)

(a) prevents an accused from making a statement without being sworn where

(i) the statement is one which he is required by law to make personally; or

(ii) he makes the statement by way of mitigation before the court passes sentence upon him; or

(b) affects the right of an accused, where he is not represented by an attorney at law, to address the court or jury otherwise than on oath on any matter on which, if he were so represented, the attorney at law could address the court or jury on his behalf. ";

(c) by deleting section 35 and substituting the following:

"Adverse witnesses

35.(1) Where a witness gives evidence that is unfavourable to the party who called the witness, that party may, with the leave of the court, question the witness about that evidence as though the party were cross-examining the witness.

(2) Where, in examination-in-chief, a witness appears to the court not to be making a genuine attempt to give evidence about a matter of which the witness may reasonably be supposed to have knowledge, the party who called the witness may, with the leave of the court, question the witness about that matter as though the party were cross-examining the witness.

(3) A party who is questioning a witness referred to in subsection (1) or (2) may also, with the leave of the court, question the witness about matters relevant to the credibility of the witness, and such questioning shall be taken to be cross-examination for the purposes of this Act.

(4) Where a witness, upon cross-examination as to a former statement made by him relative to the subject matter of the proceeding, and inconsistent with his present testimony, does not distinctly admit that he has made such statement, proof may be given that he did in fact make the statement; but before such proof can be given the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he made such statement.

(5) A witness may be cross-examined as to previous statements made by him in writing, reduced into writing or electronically recorded, relative to the subject matter of the proceeding, without such writing or electronic recording being shown to him; but if it is intended to contradict the witness by the writing or electronic recording his attention must, before such contradictory proof is given, be called to

those parts of the writing or recording which are to be used for the purpose of so contradicting him.

(6) Nothing in subsection (5) prevents the court, at any time during the trial, from requiring the production of the writing or electronic recording referred to in that subsection for its inspection, and the court may thereupon make such use of the writing or recording for the purposes of the trial as the court thinks fit.

(7) Unless the court otherwise directs, the questioning mentioned in this section shall take place before the other parties cross-examine the witness.

(8) The court may direct the order in which the parties may question the witness.

(9) The matters that the court shall take into account in determining whether to give leave, or give a direction, under this section include

(a) whether the party gave notice at the earliest opportunity of his intention to seek leave; and

(b) the matters on which, and the extent to which, the witness has been, or is likely to be, questioned by some other party.

Inconsistent statements

35A.(1) Where a person gives oral evidence and

(a) the person admits making a previous inconsistent statement; or

(b) a previous inconsistent statement made by the person is proved by virtue of section 35,

the statement is admissible as evidence of any matter stated of which oral evidence by him would be admissible.

(2) Where evidence of an inconsistent statement by a person is given under section 56(6)*(c)*, the statement is admissible as evidence of any matter stated in it of which oral evidence by that person would be admissible.

Other previous statements of witnesses

35B.(1) Where a previous statement by a witness is admitted as evidence to rebut a suggestion that his oral evidence has been fabricated, that statement is admissible as evidence of any matter stated of which oral evidence by the witness would be admissible.

(2) A statement made by a witness in a document

(a) which is used by the witness to refresh his memory while giving evidence;

(b) on which he is cross-examined; and

(c) which as a consequence is received in evidence in the proceedings,

is admissible as evidence of any matter stated of which oral evidence by him would be admissible.

(3) A previous statement by a witness is admissible as evidence of any matter stated of which oral evidence by him would be admissible, if

(a) any of the 3 conditions set out in subsection (4)*(a)*, *(b)* or *(c)* is satisfied; and

(b) while giving evidence the witness indicates that to the best of his belief

(i) he made the statement; and

(ii) the statement is true.

(4) The 3 conditions referred to in subsection (3) are

(a) that the statement identifies or describes a person, object or place;

(b) that the statement was made by the witness when the matters stated were fresh in his memory but he does not remember them, and cannot reasonably be expected to remember them, well enough to give oral evidence of them in the proceedings; and

(c) that

(i) the witness claims to be a person against whom an offence has been committed;

(ii) the offence is one to which the proceedings relate;

(iii) the statement consists of a complaint made by the witness, whether or not to a person in authority, about conduct which would, if proved, constitute the offence or part of the offence;

(iv) the complaint was not made as a result of a threat or a promise; and

(v) before the statement is adduced the witness gives oral evidence in connection with its subject matter.

(5) For the purposes of subsection (4)*(c)*, the fact that the complaint was elicited, for example, by a leading question, is irrelevant unless a threat or a promise was involved.";

(d) in section 72,

(i) in subsection (2),

(A) by deleting paragraph *(a)* and substituting the following:

"*(a)* if the confession or admission was made in circumstances where it was reasonably practicable to create an electronic recording of the confession or admission, an electronic recording of the questioning of the person and anything said by that person during that questioning was so created;"; and

(B) *in paragraph (b), by deleting subparagraph (iv) and substituting the following:*

"(iv) an electronic recording was made of the reading referred to in sub-paragraph (ii) and of everything said by or to the person questioned as a result of compliance with subparagraph (iii); and the requirements of sub-paragraph (ii) were also observed in respect of that electronic recording;";

(ii) by deleting subsection (3)*(c)* and substituting the following:

"*(c)* make a copy of the transcript prepared pursuant to subsection (3A) in respect of an electronic recording available to the person questioned or his legal representative within 7 days after the preparation of the transcript; and"; and

(iii) by inserting after subsection (3), the following:

"(3A) Where an electronic recording is created pursuant to subsection (2), a transcript of the recording shall be prepared, which identifies, in chronological order, each speaker and the words spoken by the speaker.

(3B) A transcript prepared pursuant to subsection (3A) in respect of an electronic recording shall be made available to the court where the recording is admitted into evidence; and the court may permit the transcript to be used as an aid to listening to the evidence."; and

(e) by deleting sections 95 and 143(8).

Commencement of section 72 of Cap. 121

3. Section 72 of the *Evidence Act*, Cap. 121 shall come into operation upon the commencement of this Act.

Amendment of Cap. 127

4. Sections 6A and 7A of the *Criminal Procedure Act*, Cap. 127 are deleted.

Transitional

5. Nothing in this Act applies to proceedings commenced before the commencement of this Act.

Read three times and passed the House of Assembly this day of , 2026.

Speaker

Read three times and passed the Senate this day of , 2026.

President