

2014-09-01

Explanatory Memorandum after page 6

OBJECTS AND REASONS

This Bill would amend the *Penal System Reform Act*, Cap. 139 to improve

- (a) the guidelines applicable to the mitigation of an offender's sentence;
and
- (b) the general judicial sentencing guidelines.

Arrangement of Sections

1. Short title
2. Amendment of section 39 of Cap. 139
3. Amendment of section 41 of Cap. 139

BARBADOS

A Bill entitled

An Act to amend the *Penal System Reform Act, Cap. 139*.

ENACTED by the Parliament of Barbados as follows:

Short title

- 1.** This Act may be cited as the *Penal System Reform (Amendment) Act, 2014*.

Amendment of section 39 of Cap. 139

2. *Section 39 of the Penal System Reform Act, in this Act referred to as the principal Act, is amended by deleting subsection (1) and substituting the following:*

“Consideration of mitigating factors

39.(1) Nothing in this Act prevents a court from mitigating an offender’s sentence by taking into account such matters as, in the opinion of the court, are relevant considerations with respect to the mitigation of a sentence, including

- (a) the age of the offender;
- (b) the particular circumstances of the offender such as his social or economic circumstances;
- (c) whether the offender pleaded guilty and the point at which the guilty plea was made;
- (d) the circumstances or facts of the offence and the degree of the offender’s involvement in the offence;
- (e) any attempt by the offender to make reparation for the offence.”.

Amendment of section 41 of Cap. 139

3. *The principal Act is amended by repealing section 41 and substituting the following:*

“Judicial sentencing guidelines.

41.(1) Without prejudice to sections 33 to 40, a court in sentencing an offender convicted by the court shall observe the sentencing guidelines in subsection (2).

(2) In sentencing an offender, the court shall take into account such matters as, in the opinion of the court are relevant considerations with respect to the sentencing of that offender, including

- (a) the gravity of the offence and the need to hold the offender accountable for the harm done to the victim and the community by the offence;
- (b) any written representation made by a spouse or relative of the deceased, in respect of murder or manslaughter and in any other case any written representation from the victim;
- (c) ensuring that the gravity of the sentence is commensurate with the nature of the offence committed by the offender;
- (d) the need to deter the offender and others from committing similar offences;
- (e) the manner in which the offender executed the offence and the nature and duration of the relationship between the offender and the victim;
- (f) the degree of culpability of the offender and maximum penalty prescribed for the offence;
- (g) any attempt on the part of the offender to make reparation to the victim or the victim’s family;
- (h) the need for the rehabilitation of the offender, and the need to promote a sense of responsibility on the part of the offender for the harm done to the victim;

- (i) the need for consistency in sentencing in respect of similar offences; and
- (j) the possibility of providing restitution for the harm done by the offender.”.

Read three times and passed the House of Assembly this
day of _____, 2014.

Speaker

Read three times and passed the Senate this _____ day of
, 2014.

President

PENAL SYSTEM REFORM (AMENDMENT) BILL, 2014

EXPLANATORY MEMORANDUM

In light of the decision of the Inter-American Court of Human Rights in *Case 12645: Tyrone Dacosta Cadagon v. Barbados*, the Cabinet¹ determined that

- (a) the mandatory imposition of death penalty in respect of the offence of murder should be abolished; and
- (b) section 2 of the *Offences Against the Person Act*, Cap. 141 be amended specifically to abolish the mandatory imposition of the sentence of death for offence of murder; and

It has been determined that section 26 of the *Constitution* will not be repealed at this time.

It is important to note that the Cabinet did not express any intention to abolish the death penalty.

In order to facilitate the decision made by the Cabinet and, in particular, to lend support to the new sentencing guidelines for the offence of murder under the new *Offences Against the Person (Amendment) Bill, 2014*, it was determined that it was necessary to amend sections 39 and 41 of the *Penal System Reform Act*, Cap. 139.

The *Penal System Reform Act* applies generally to offences, the sentencing for which is discretionary in nature, in that a Judge has discretion to impose a sentence which addresses the specific circumstances of the offender and the case. Section 39 which deals with the consideration of mitigating circumstances in relation to sentencing offenders and section 41 which deals with judicial sentencing guidelines, allows judges to facilitate that discretion.

The new *Offences Against the Person (Amendment) Bill, 2014* has changed the status of the sentence for the offence of murder from one that is fixed by a mandatory sentence to one that is discretionary in nature, where the sentence can

¹ Cabinet Note (2014) 73/AG.2, M.P. No. 28000/8/9/8 Vol. I, January 30, 2014.

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be tailored to fit the circumstances of the case and individuality of the offender. Thus it is foreseen that sections 39 and 41 of the *Penal System Reform Act* would now as a result of the *Offences Against the Person (Amendment) Bill, 2014* apply to the offence of murder.

The Inter-American Court of Human Rights in *Case 12645: Tyrone Dacosta Cadagon v. Barbados* also emphasised the fact that a sentence that is applicable to the offence of murder must be individualized to address the particular circumstances of the offence and the offender.² Sections 39 and 41 of the *Penal System Reform Act* were amended to improve the guidelines for sentencing and thereby better facilitating the decision of the Inter-American Court.

In summary, the *Penal System Reform (Amendment) Bill, 2014* would amend the *Penal System Reform Act, Cap. 139* to improve

- (a) the guidelines applicable to the mitigation of an offender's sentence; and
- (b) the judicial sentencing guidelines in general.

Clause 1: Clause 1 states that the Act should be cited as the *Penal System Reform (Amendment) Act, 2014*.

Clause 2: Clause 2 repeals and replaces section 39 of the *Penal System Reform Act, Cap. 139* to provide for the improvement of the guidelines applicable to the mitigation of an offender's sentence.

Clause 3: Clause 2 repeals and replaces section 41 of the *Penal System Reform Act, Cap. 139* to provide for the improvement of the general judicial sentencing guidelines.

² Case 12645: Tyrone Dacosta Cadagon v. Barbados, paragraphs 53 to 57.