

2014-09-01

Explanatory Memorandum after page 5

OBJECTS AND REASONS

This Bill would amend the *Criminal Procedure Act*, Cap. 127 to

- (a) make provision for a person who is to be arraigned upon indictment for the offence for murder to undergo a psychiatric evaluation to determine whether that person is fit to plead; and
- (b) allow judges to intervene where a defence should be raised in relation to an accused.

Arrangement of Sections

1. Short title
2. Insertion of section 6A into Cap. 127
3. Insertion of section 7A into Cap. 127

BARBADOS

A Bill entitled

An Act to amend the *Criminal Procedure Act, Cap. 127*.

ENACTED by the Parliament of Barbados as follows:

Short title

- 1.** This Act may be cited as the *Criminal Procedure (Amendment) Act, 2014*.

Insertion of section 6A into Cap. 127

2. *The Criminal Procedure Act, in this Act referred to as the principal Act, is amended by inserting immediately after section 6 the following section:*

“Psychiatric evaluation

6A.(1) The High Court shall order a person who is to be arraigned upon indictment for the offence of murder to undergo a psychiatric evaluation the results of which shall be used to assist the Court in determining whether that person is fit to plead.

(2) Where a person has been found to be unfit to plead, the High Court may order that person to be admitted to a mental hospital for a period not exceeding 8 weeks.

(3) A person admitted to a mental hospital under subsection (2) may be discharged only after the approval of the High Court and the Court may specify conditions of his discharge.

(4) The High Court in specifying the conditions of the discharge of a person under subsection (3), shall order that that person undergo further psychiatric evaluations at intervals to be determined by the Court.

(5) Where a person is found to be fit to plead under subsections (1) and (4), he shall enter the plea in the manner specified in section 7.”.

Insertion of section 7A into Cap. 127

3. *The principal Act is amended by inserting immediately after section 7, the following section:*

“Intervention of the judge

7A.(1) Where a judge determines from the circumstances of the case before him that the defences of diminished responsibility or insanity should be raised in relation to an accused, the judge shall order that the accused undergo a psychiatric evaluation to determine whether the mental status of the accused person would support the submission of arguments for diminished responsibility or insanity in relation to that accused person.

(2) Where the results of the psychiatric evaluation indicate that the defences of diminished responsibility or insanity should be raised in respect of the accused, the judge shall make that psychiatric evaluation available to defence counsel.”.

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

CRIMINAL PROCEDURE (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.

It has been determined that section 26 of the *Constitution* known as the "existing law clause" 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.

The Inter-American Court of Human Rights in *Case 12645: Tyrone Dacosta Cadagon v. Barbados*, raised concerns about the assessment of the mental state of the accused as it relates to the following:

- (a) a person's fitness to plead;
- (b) raising defences such as diminished responsibility; or
- (c) the trial judge's responsibility in ensuring that assessments are made to facilitate the raising of such defences.²

In a separate judgment, Judge Sergio García Ramírez, asserted that judges should intervene in trials to raise the submission of evidence to support defences like diminished responsibility, especially in circumstances where the penalty to be imposed is death.³ Judge Ramírez insisted that the adversarial nature of a

¹ Cabinet Note (2014) 73/AG.2, M.P. No. 2800/8/9/8 Vol. I, January 30, 2014.

² Case 12645: Tyrone Dacosta Cadagon v. Barbados, paragraphs 79-88.

CRIMINAL PROCEDURE
(AMENDMENT) BILL, 2014

criminal procedural system does not prohibit a judge from assuming such probative measures where necessary.

It was determined that the *Criminal Procedure Act*, Cap. 127 should be amended to address the afore-mentioned concerns of the Inter-American Court.

The *Criminal Procedure (Amendment) Bill, 2014* will amend the *Criminal Procedure Act*, Cap. 127 to

- (a) make provision for a person who is to be arraigned upon indictment for the offence of murder to undergo a psychiatric evaluation to determine whether that person to fit to plead; and
- (b) allow judges to intervene where a defence should be raised in relation to an accused.

Clause 1: Clause 1 states that the Act may be cited as the *Criminal Procedure (Amendment) Act, 2014*.

Clause 2: Clause 2 inserts into the *Criminal Procedure Act*, Cap. 127 a new section 6A which makes provision for a person who is to be arraigned upon indictment for the offence for murder to undergo a psychiatric evaluation to determine whether that person is fit to plead.

Clause 3: Clause 3 inserts into the *Criminal Procedure Act*, Cap. 127 inserts a new section 7A to allow judges to intervene where the defenses of insanity and diminished responsibility should be raised in relation to an accused.

3 Case 12645: Tyrone Dacosta Cadagon v. Barbados, Separate Opinion of Judge Sergio García Ramírez in relation to the Judgement of the Inter-American Court of Human Rights of September 24, 2009, in the case of Case of Dacosta Cadagon (Barbados), paragraphs 18.