

Explanatory Memorandum after page 6

2018-08-08

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, 2018*.

Amendment of section 39 of Cap. 139

2. *Section 39 of the Penal System Reform Act, Cap. 139, 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 the following guidelines:

- (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 commission of 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 the 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 _____, 2018.

Speaker

Read three times and passed the Senate this _____ day of
, 2018.

President

PENAL SYSTEM REFORM (AMENDMENT) BILL, 2018

EXPLANATORY MEMORANDUM

The *Penal System Reform (Amendment) Bill, 2018* 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.

The sentencing guidelines set out in sections 39 and 41 of the *Penal System Reform Act, Cap. 139* applied to offences the sentencing for which was discretionary. The new *Offences Against the Person (Amendment) Bill, 2018* will change 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. Thus the sentence imposed for murder can be tailored to fit the circumstances of the case and individuality of the offender. As a consequence of the aforementioned amendment, it was determined that it was necessary to amend sections 39 and 41 of the *Penal System Reform Act, Cap. 139* to ensure that they apply appropriately to the offence of murder.

Clause 1: Clause 1 states that the Act should be cited as the *Penal System Reform (Amendment) Act, 2018*.

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.