Revision Date: 31 Dec 2009

ST CHRISTOPHER AND NEVIS

CHAPTER 4.06

CRIMINAL PROCEDURE ACT

Revised Edition
showing the law as at 31 December 2009

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Law Revision Act, Cap. 1.03

This edition contains a consolidation of the following laws:

Criminal Procedure Act

Act 3 of 1873 in force 24th March, 1873
Amended by Act 12 of 1967
Act 17 of 1975
Act 7 of 1976
Act 9 of 1986
Act 3 of 1987
Act 10 of 1998
Act 6 of 2000
Act 3 of 2005

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CHAPTER 4.06

CRIMINAL PROCEDURE ACT

ARRANGEMENT OF SECTIONS

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CHAPTER 4.06

CRIMINAL PROCEDURE ACT

AN ACT to provide for the procedure to be followed in criminal matters; and to provide for related or incidental matters

PART I – PRELIMINARY

1. **Short title.**

This Act may be cited as the Criminal Procedure Act.

2. **Interpretation.**

(1) In the interpretation of this Act, and of any other Act relating to criminal law, unless there be something in the enactment, or in the context, indicating a different meaning, or calling for a different construction,

"indictment" includes "information" and "inquisition" as well as indictment, and also any plea, replication, or other pleadings, and any record;

"Minister" means the Minister responsible for National Security;
[Inserted by Act 3/1987 and amended by Act 6/2000]

"property" includes goods, chattels, money, valuable securities, and every other matter or thing, whether real or personal, upon or with respect to which any offence may be committed;

"the Court" means the High Court or any Judge thereof.

(2) Whenever in any Act relating to any offence, whether punishable on indictment or summary conviction, any word has been used or employed in describing or referring to the offence, or to the subject matter on or with respect to which it may be committed, or to the offender, or the party affected, or intended to be affected, by the offence, such Act shall be understood to include several matters of the same kind as well as one matter, and, when a forfeiture or penalty is made payable to a party aggrieved, it shall be payable to a body corporate in case such a body be the party aggrieved.

(3) Whenever a person doing a certain act is declared to be guilty of any offence and to be liable to punishment in respect of that offence, it shall be understood that such person shall only be deemed guilty of such offence and liable to such punishment after being duly convicted of such act, and whenever, it is provided that the offender shall be liable to different degrees or kinds of punishment, it shall be understood that the punishment to be inflicted will be subject to the limitations contained in the enactment, in the discretion of the Court, or tribunal, before which such conviction takes place.

PART II – APPREHENSION OF OFFENDERS

3. Constable or peace officer may apprehend without warrant.

Any person, found committing an offence punishable either upon indictment or upon summary conviction, may be immediately apprehended by any constable, or peace officer, without a warrant, or by the owner of the property on or with respect to which the offence is being committed, or by his or her servant, or any other person authorised by such owner, and shall be forthwith taken before a Magistrate to be dealt with according to law.

4. Persons offering goods suspected to be stolen may be apprehended.

If any person, to whom any property is offered to be sold, pawned or delivered, has reasonable cause to suspect that any offence has been committed with respect to the property, he or she may, and, if in his or her power, he or her shall, apprehend and forthwith carry before a Magistrate the party offering the same, together with such property, to be dealt with according to law.

5. Apprehension by private persons of night offenders.

Any person may apprehend any other person found committing any indictable offence in the night, and shall convey or deliver him or her to some constable, or other person in order that he or she may be taken, as soon as he or she conveniently may be, before a Magistrate to be dealt with according to law.

6. Constable, etc., may apprehend persons found loitering about at night.

Any constable or peace officer may, without a warrant, take into custody any person whom he or she finds loitering or lying in any highway, yard, or other place during the night, and whom he or she has good cause to suspect of having committed, or being about to commit, any felony, and may detain such person until he or she can be brought before a Magistrate to be dealt with according to law:

Provided that no person, apprehended as aforesaid, shall be detained longer than forty-eight hours without being brought before a Magistrate.

7. Proceedings before magistrate.

The proceedings to be had before any Magistrate, when any offender is brought before him or her, shall, subject to any special provision contained in any Act relating to the particular offence with which the offender is charged, be regulated by the provisions of the Magistrate's Code of Procedure Act, relating to the summary jurisdiction (criminal) of Magistrates.

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PART III – VENUE, PLACE OF TRIAL, ETC.

8. Offences committed on the boundary of two or more circuits, etc., where triable.

When any felony or misdemeanour is committed on the boundary of two or more Circuits, districts, or places, or within the distance of one mile of any such boundary, or in any place with respect to which it may be uncertain within which of two or more Circuits, districts, or places it is situate, or when any felony or misdemeanour is begun in one Circuit, district, or place, and completed in another, every such felony or misdemeanour may be dealt with, enquired of, tried, and punished in any one of the said Circuits, districts, or places, in the same manner as if it had been actually and wholly committed therein; and, when any such felony or misdemeanour has been wholly committed in any Circuit, district, or place from which the offender escapes, such felony or misdemeanour may be dealt with, enquired of, tried, and punished in the Circuit, district, or place in which such offender has been arrested.

9. Offences in coaches, vessels, etc., on journey where triable.

When any felony or misdemeanour is committed on any person, or on, or in respect of, any property in, or upon, any coach, wagon, cart, or other carriage employed in any journey, or is committed on any person, or on, or in respect of, any property, on board any vessel, boat, or craft, employed in any voyage or journey upon any navigable river, canal, or inland navigation, such felony or misdemeanour may be dealt with, enquired of, tried, determined, and punished, in any Circuit, district, or place, through any part whereof such coach, wagon, cart, carriage, or vessel, boat, or craft, passed in the course of the journey, during which the felony or misdemeanour was committed, in the same manner as if it had been actually committed in such Circuit, district, or place.

10. Where part of highway, etc., constitutes boundary of Circuits, etc., offences triable in either district.

In all cases where the side, centre, bank, or other part, of any highway, or of any river, canal, or navigation, constitutes the boundary of any two Circuits, districts, or places, any felony or misdemeanour mentioned in sections 8 and 9 may be dealt with, enquired of, tried, determined, and punished, in either of such Circuits, districts, or places, through, or adjoining to, or by the boundary of, any part whereof, such coach, wagon, cart, carriage, or vessel, boat, or craft, passed when the felony or misdemeanour was committed, in the same manner as if it had actually been committed in such Circuit, district, or place.

11. The trial may take place in any Circuit by order of the Judge.

(1) Whenever it appears to the satisfaction of the Court, or Judge, hereinafter mentioned, that it is expedient to the ends of justice that the trial of any person, charged with a felony or misdemeanour, should be held in some other Circuit than that in which the offence is supposed to have been committed, or would otherwise be triable, the Court, at which the person is, or is liable to be, indicted, may, at any term or sitting of the Court, and any Judge, who might hold or sit in that Court, may, at any other time, order, either before or after the presentation of a bill of indictment, that the trial shall be proceeded with in some other Circuit to be named by the Court, or Judge, in such order, but the order shall be

made upon such conditions as to the payment of any additional expense thereby caused to the accused, as the Court, or Judge, may think proper to prescribe, and

(2) Forthwith upon the order of removal being made by the Court or Judge, the indictment, if any has been presented against the prisoner, and all inquisitions, informations, depositions, recognisances and any other documents, relating to the prosecution against him or her, shall be transmitted by the officer having the custody thereof to the proper officer of the Court at the place where the trial is to be had, and all proceedings in the case shall be had, or, if previously commenced, shall be continued, in that Circuit as if the case had arisen, or the offence had been committed, therein.

(3) The order of the Court, or of the Judge, made under this section, shall be a sufficient warrant, justification and authority, to any Provost Marshal, keeper of a prison and peace officer, for the removal, disposal and reception of the prisoner in conformity with the terms of the order, and the Provost Marshal may appoint and empower any constable, or police officer, to convey the prisoner to the prison in the State in which the trial is ordered to be had.

(4) Every recognizance, which may have been entered into, or is to be entered into, for the prosecution of any person, and every recognizance, as well of any witness to give evidence as of any person for any offence, shall, in case the order as provided by this section is made, be obligatory on each of the parties bound by the recognisance, as to all things therein mentioned with reference to the trial, at the place where the trial is so ordered to be had, in like manner as if the recognizance had been originally entered into, for the doing of such things at such last mentioned place:

Provided that notice in writing shall be given, either personally, or by leaving the same at the place of residence of the parties bound by the recognizance as therein described, to appear before the Court, at the place where the trial is ordered to be had.

PART IV – PROCEEDINGS PRELIMINARY TO TRIAL

12. When accused committed for trial copy of depositions to be supplied to Director of Public Prosecutions.

When a person is committed for trial under the provisions of the Magistrate's Code of Procedure Act, Cap. 3.17, the Registrar of the Circuit, in which the person has been committed, shall, as soon as practicable after the written information (if any), the depositions and the statement of the accused have been delivered to him or her in accordance with the provisions of the Magistrate's Code of Procedure Act, cause a copy of the said documents to be made and delivered to the Director of Public Prosecutions.

[Amended by Act 12/1967]

13. Power of Director of Public Prosecutions to remit cause for further inquiry.

At any time after the receipt of the copy of the documents mentioned in section 12 and before the sitting of the Court to which the accused person has been committed for trial, the Director of Public Prosecutions may, if he or she thinks fit, remit the cause to the Magistrate with directions to re-open the inquiry for the purpose of taking evidence or further evidence on a certain point or points to be specified, and with any other directions he or she thinks proper.

[Amended by Act 12/1967]

14. **Power of Director of Public Prosecutions to remit cause to be dealt with summarily.**

If after the receipt of the copy of the documents mentioned in section 12 the Director of Public Prosecutions is of opinion that the accused person should not have been committed for trial but that the matter should have been dealt with summarily, the Director of Public Prosecutions may, if he or she thinks fit, at any time after that receipt, remit the cause to the Magistrate with directions to deal with it accordingly, and with any other directions he or she thinks proper.

[Amended by Act 12/1967]

15. **Power of Director of Public Prosecutions to remit case for committal.**

(1) In any case where the Magistrate discharges an accused person, the Director of Public Prosecutions may require the Magistrate to send to him or her the depositions taken in the cause, or a copy thereof, and any other documents or things connected with the cause which he or she thinks fit.

(2) If, after the receipt of those documents and things, the Director of Public Prosecutions is of opinion that the accused person should have been committed for trial, the Director of Public Prosecutions may, if he or she thinks fit, remit them to the Magistrate, with directions to deal with the matter accordingly, and with any other directions he or she thinks proper.

[Amended by Act 12/1967]

16. **Further provision as to remission of cause.**

(1) Any directions given by the Director of Public Prosecutions under sections 13, 14 and 15 shall be in writing and shall be complied with by the Magistrate but the Director of Public Prosecutions may at any time add to, alter or revoke such directions.

(2) Whenever the Director of Public Prosecutions gives any directions under sections 13, 14 or 15, the following provisions (where necessary or applicable) shall have effect, that is to say,

(a) the Registrar at the request in writing of the Director of Public Prosecutions shall send back to the Magistrate the original documents transmitted to him or her by the Magistrate;

(b) where the accused person is in custody, the Magistrate may, by an order in writing under his or her hand, direct the keeper of the prison having his or her custody to convey him or her or cause him or her to be conveyed to the place where the proceedings are to be held for the purpose of being dealt with as the Magistrate directs;

(c) where the accused person is on bail or is at liberty, the Magistrate shall issue a summons for his or her attendance at the time and place when and where the proceedings are to be held; and

(d) thereafter the proceedings shall be continued under the provisions of the Magistrate's Code of Procedure Act as if the accused person had not been committed for trial or had not been discharged, as the case may be, and, in the case of any directions given under section 14, in

the same manner as if the Magistrate had himself or herself formed an opinion in terms of section 52 of the Magistrate's Code of Procedure Act.

[Amended by Act 12/1967]

17. **Right of Director of Public Prosecutions to enter *nolle prosequi.***

(1) At any time after the receipt of the copy of the documents mentioned in section 12, and either before or at the trial and at any time before verdict, the Director of Public Prosecutions may enter *nolle prosequi* either by stating in Court or by informing the Court in writing addressed to the Registrar that the Crown intends that the proceedings shall not continue, and, thereupon, the accused person shall be at once discharged in respect of the charge for which *nolle prosequi* is entered, and if he or she has been committed to prison, shall be released, or if he or she is on bail, his or her recognizance shall be discharged, but his or her discharge shall not operate as a bar to any subsequent proceedings against him or her on the same facts.

[Amended by Act 12/1967]

(2) If the accused person is not before the Court when *nolle prosequi* is entered, the Registrar shall cause notice in writing of the entry to be given to the keeper of the prison in which the accused in detained, and also to the Magistrate of the district in which he or she was committed for trial, and the Magistrate shall forthwith cause a similar notice in writing to be given to any witnesses bound over to give evidence at the trial and to the accused and his or her sureties if he or she has been admitted to bail.

18. **Institution of proceedings.**

On receipt of the copy of the documents relating to the preliminary inquiry, the Director of Public Prosecutions, if he or she sees fit to do so, shall institute such criminal proceedings in the High Court against the accused person which to him or her seem proper.

[Amended by Act 12/1967]

PART V – INDICTMENTS, ETC

19. **Mode of trial.**

A person who is committed for trial shall be tried on an indictment filed by the Director of Public Prosecutions:

Provided that nothing in this section shall affect the right of the Director of Public Prosecutions to file a criminal information.

[Amended by Act 12/1967]

20. **Filing and service of copy of indictment.**

(1) Subject to the provisions of this section, every indictment shall be filed in the Registry of the High Court of the Circuit five days at least before the day of trial of the accused person charged in the indictment.

(2) The Registrar of the Circuit shall, four days at least before the day of trial, deliver or cause to be delivered to the keeper of the prison to which the accused person has

been committed to await his or her trial, or to which he or he would in due course have been so committed if he or she had not been admitted to bail, a certified copy of the indictment, and the copy shall be given by the keeper to the accused person forthwith, if he or she is in custody, or when he or she applies for it, if he or she is on bail.

(3) Whenever the keeper of a prison delivers a copy of the indictment to an accused person he or she shall notify the Registrar of the Circuit of the fact and the notification purporting to be signed by the keeper shall be *prima facie* proof of the fact that the copy aforesaid was delivered to the accused person, and at the time and on the date, mentioned therein.

(4) Whenever the Court orders or allows another indictment to be preferred at the same sitting of the Court for the same offence or for a minor offence, the accused person shall not be entitled to have a copy served upon him or her for a longer period than twenty-four hours before his or her arraignment on the other indictment.

(5) Notwithstanding the foregoing provisions of this section, an indictment may be filed at any time before the first day of the sitting of the Court, but, in such event, the accused person shall be entitled to apply to the Court for a postponement of the trial to another sitting of the Court on the ground that he or she has not had sufficient time to prepare his or her defence.

21. **Bringing of prisoners before the Court for trial.**

(1) The keeper of the prison shall, by himself or herself or by his or her deputy, be in attendance at all times while the Court is sitting, and shall bring each prisoner awaiting trial before the Court when his or her case is called for trial, and during the continuance of the trial shall have him or her under his or her charge and custody, and from time to time remand him or her to prison by permission or order of the Court during the progress of the trial or on any adjournment of the trial

(2) The Chief of Police shall afford any assistance necessary to enable the keeper to comply with the requirements of this section.

22. **Crown prosecutors.**

(1) The Director of Public Prosecutions may instruct counsel to prosecute on behalf of the Crown at any sitting of the Court or on any day or days of the sitting.

[Amended by Acts 3/1987 and 6/1976]

(2) It shall not be necessary for any person so appointed to produce any commission or other proof of his or her having been so appointed.

(3) Any person so appointed shall, in relation to the business before the Court during the subsistence of his or her appointment, have all the powers and perform all the duties of the Director of Public Prosecutions but subject to any express directions of the Director of Public Prosecutions in that behalf.

[Amended by Act 12/1967]

PART VI – DILATORY PLEAS, ARRAIGNMENT, ETC.

23. Further time to plead.

A person who is prosecuted shall not be entitled, as of right, to traverse, or postpone, the trial of any indictment presented against him or her in any Court, or to have time allowed him or her to plead, or demur, to such indictment:

Provided that, if the Court before whom any person is so indicted, upon the application of that person, or otherwise, is of opinion that he or she ought to be allowed a further time to plead or demur, or to prepare for his or her defence or otherwise, the Court may grant further time to plead or demur, or may adjourn the receiving or taking of the plea or demurrer, and the trial (as the case may be) of that person, to some future time of the sitting of the Court, or to the next, or any subsequent, sitting of the court, and upon such terms as to bail, or otherwise, as to the Court seems meet, and may, in the case of adjournment to another session or sitting, respite the recognisances of the prosecutor and witnesses accordingly; in which case the prosecutor and witnesses shall be bound to attend to prosecute and give evidence at such subsequent session or sitting, without entering into any fresh recognisances for that purpose.

24. Plea of not guilty puts defendant on trial.

If any person, being arraigned upon any indictment for any indictable offence, pleads thereto "not guilty", he or she shall, by the plea, without any further form, be deemed to have put himself or herself upon the country for trial, and the Court may, in the usual manner, order a jury for the trial of that person accordingly.

25. Persons standing mute.

If any person, being arraigned upon any indictment for any indictable offence, stands mute of malice, or will not answer directly to the indictment, in every such case the Court may, if it thinks fit, order the proper officer to enter a plea of "not guilty" on behalf of that person, and the plea so entered shall have the full force and effect as if that person had actually pleaded the same.

26. Pleas of autrefois convict or acquit.

In any plea of autrefois convict or autrefois acquit, it shall be sufficient for any defendant to state that he or she has been lawfully convicted or acquitted (as the case may be) of the offence charged in the indictment.

PART VII – TRIAL, DEFENCE, VERDICT, ETC

27. Defence by counsel.

All persons tried for any indictable offence shall be admitted, after the close of the case for the prosecution, to make full answer and defence thereto by counsel learned in the law.

28. **Rules for addresses by counsel to jury.**

(1) Upon any trial, the addresses to the jury shall be regulated as follows:

(a) the counsel for the prosecution, in the event of the defendant, or his or her counsel, not announcing, at the close of the case for the prosecution, his or her intention to adduce evidence, shall be allowed to address the jury a second time at the close of the case, for the purpose of summing up the evidence;

(b) the accused, or his or her counsel, shall then be allowed to open his or her case, and also to sum up the evidence, if any be adduced for the defence; and

(c) the right of reply shall be in accordance with the practice of the Courts in England.

(2) Where the only witness to the facts of the case called by the defence is the person charged he or she shall be called as a witness immediately after the close of the evidence for the prosecution.

(3) In cases where the right of reply depends upon the question whether evidence has been called for the defence, the fact that the person charged has been called as a witness shall not of itself confer on the prosecution the right to reply:

Provided that the right of reply shall be always allowed to the Director of Public Prosecutions, or to any counsel acting on behalf of the Crown.

[Amended by Act 12/1967]

29. **Additional evidence for the prosecution.**

(1) A witness who has not given evidence at the preliminary inquiry shall not be called by the prosecution at any trial unless the accused has received reasonable notice in writing of the intention to call such witness.

(2) The prosecution shall specify in the notice referred to in subsection (1) of this section the name of the witness and the substance of the evidence the witness intends to give, and the court may, in any particular case, determine what notice is reasonable, regard being had to the time when and the circumstances under which the prosecution became acquainted with the nature of the witness's evidence and decided to call him or her as a witness.

(3) Where the prosecution becomes aware that a witness who was called at the preliminary inquiry proposes to give evidence which he or she did not give at the preliminary inquiry, the prosecution shall, as soon as possible, give the accused notice in writing of the substance of the new evidence, and such notice shall be deemed to form part of the depositions.

[Inserted by Act 10/1998. This section was originally section 28B.
Consequently sections 29and 30 have been renumbered as sections 30 and 31]

30. **Accused entitled to inspect depositions at trial without fee.**

A person who is under trial shall be entitled, at the time of his or her trial to inspect, without fee or reward, all depositions (or copies thereof) taken against him or her, and returned into the Court before which the trial is had.

31. **Accused entitled to a copy of the depositions.**

A person who is indicted shall be entitled to a copy of the depositions returned into Court:

Provided (if the same are not demanded before the opening of the term, sittings or sessions) the Court is of opinion that the same can be made without delay to the trial, but not otherwise; but the Court may, if it see fit, postpone the trial on account of such copy of the depositions not having been previously had by the person charged.

32. **Accused not to make unsworn statements.**

(1) Notwithstanding any law or practice to the contrary, and subject to the provisions of subsections (2) and (3) of this section, an accused person shall not, in any criminal proceedings, make a statement without being sworn, and if he or she opts to give evidence he or she shall do so on oath and be liable to cross-examination.

(2) The provisions of subsection (1) shall not, where the accused is not represented by Counsel, affect the right of the accused to address the court or jury otherwise than on oath on any matter which, if he or she were represented by Counsel, the Counsel could address the Court or jury on his or her behalf.

(3) The provisions of subsection (1) of this section shall not prevent the accused person from making a statement without being sworn if it is a statement which he or she is required by law to make personally or if he or she makes the statement by way of mitigation before the court passes any sentence upon him or her.

[Inserted by Act 10/1998]

33. **Notice of alibi.**

(1) The accused shall not, in any criminal proceedings before the High Court, without leave of the court, adduce evidence in support of an alibi unless, before the end of twenty-eight days after his or her committal, he or she gives notice of particulars of the alibi.

(2) Without prejudice to the provisions of subsection (1) of this section, the accused while on trial shall not, without leave of the court, call any other person to give evidence in support of the accused's alibi unless

(a) the notice given under subsection (1) of this section includes the name and address of the witness or, if the name or address is not known to the accused at the time he or she gives the notice, any information which might be of material assistance in finding the witness;

(b) if the name is not included in the notice, the court is satisfied that the accused, before giving the notice, took and thereafter continued to

take reasonable steps to secure that the name and address would be ascertained;

(c) if the name or the address is not included in the notice and the accused subsequently discovers the name or address or receives information which is of material assistance in finding the witness, he or she forthwith gives notice of the name, address, or other information, as the case may be; and

(d) if the accused is notified, by or on behalf of the prosecution that the witness has not been traced by the name or at the address given, he or she forthwith gives notice of that information which is in his or her possession or, on subsequently receiving any such information, forthwith gives notice of it.

(3) The court shall not refuse leave under this section if it appears to the court that the accused was not informed by the Magistrate at the time of committal for trial of the requirements of this section.

(4) Any evidence tendered to disprove an alibi may, subject to any directions by the court as to the time it is to be given, be given before or after evidence is given in support of the alibi.

(5) Any notice purporting to be given under this section on behalf of the accused by his or her counsel shall, unless the contrary is proved, be deemed to be given with the authority of the accused.

(6) A notice given under subsection (1) shall be given in court during, or at the end of, the preliminary inquiry, in which case it shall be recorded in full in the record of proceedings, or be delivered in writing to the magistrate before the end of the seven days period.

(7) A notice given under paragraph (c) or (d) of subsection (2) of this section shall be delivered in writing to the Magistrate.

(8) For the purposes of this section, evidence in support of alibi means evidence tending to show that by reason of the presence of the accused at a particular place or in a particular area at a particular time he or she was not, or was not likely to have been, at the place where the offence is alleged to have been committed at the time of its alleged commission.

[Inserted by Act 10/1998. Sections 32 and 33 were originally sections 30A and 30B. Consequently sections 31 to 52 have been renumbered as sections 34, 35, 36,37, 38,39,40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54 and 55]

34. **Punishment of person attempting to commit a felony or misdemeanour, offence not being completed.**

If, on the trial of any person charged with a felony or misdemeanour, it appears to the jury, upon the evidence that the defendant did not complete the offence charged, but that he or she was guilty only of an attempt to commit the same, that person shall not, by reason thereof, be entitled to be acquitted, but the jury shall be at liberty to return, as their verdict, that the defendant is not guilty of the felony or misdemeanour charged, but is guilty of an attempt to commit the same; and thereupon that person shall be liable to be

punished in the same manner as if he or she had been convicted on an indictment for attempting to commit the particular felony or misdemeanour charged in the indictment.

35. **No person, after trial for any offence, to be tried for attempting to commit same offence.**

A person shall not be tried or prosecuted for an attempt to commit a felony or misdemeanour, who has been previously tried for committing the same offence.

36. **Where a person is on trial for misdemeanour, and the facts amount to felony, such party is not entitled to acquittal.**

If, upon the trial of any person for a misdemeanour, it appears that the facts given in evidence, while they include the misdemeanour, amount in law to a felony, that person shall not by reason thereof, be entitled to be acquitted of the misdemeanour (and the person tried for the misdemeanour, if convicted, shall not be liable to be afterwards prosecuted for felony on the same facts) unless the Court before which the trial is had thinks fit, in its discretion, to discharge the jury from giving any verdict upon the trial, and to direct that person to be indicted for felony, in which case that person may be dealt with, in all respects, as if he or she had not been put upon his or her trial for the misdemeanour.

37. **Verdict of assault may be found where felony charged.**

On the trial of any person for a felony, where the crime charged includes an assault against the person, although an assault be not charged in terms, the jury may acquit of the felony, and find a verdict of guilty of an assault against the person indicted, if the evidence warrants such finding, and the convicted person shall be liable to be imprisoned for a term not exceeding two years, with or without hard labour.

38. **Proceedings upon indictment for committing any offence after a previous conviction.**

The proceedings upon any indictment for committing any offence after a previous conviction, or convictions, shall be as follows, that is to say:

(a) the accused shall, in the first instance, be arraigned upon so much only of the indictment as charges the subsequent offence;

(b) if he or she pleads not guilty, or if the Court orders a plea of not guilty to be entered on his or her behalf, the jury shall be charged, in the first instance, to inquire concerning the subsequent offence only;

(c) if the jury finds the accused guilty, or if on arraignment the accused pleads guilty, he or she shall then, and not before, be asked whether he or she was previously convicted as alleged, and, if the accused answers that he or she was previously convicted, the Court may proceed to sentence him or her accordingly, but, if he or she denies, or stands mute of malice, or will not answer directly to the question, the jury shall then be charged to inquire concerning the previous conviction or convictions, and in that case it shall not be necessary to swear the jury again, but the oath already taken by them shall, for all purposes, be deemed to extend to such last mentioned inquiry:

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Provided that, if, upon the trial of any person for a subsequent offence, that person gives evidence of his or her good character, it shall be lawful for the prosecutor, in answer thereto, to give evidence of the conviction of that person for the previous offence, or offences, before a verdict of guilty is returned, and the jury shall inquire concerning the previous conviction, or convictions, at the same time that they inquire concerning the subsequent offence.

39. **In treason or felony, jury not to enquire of lands, goods, etc.**

The jury empanelled to try a person for treason or felony shall not be charged to inquire concerning his or her lands, tenements, or goods, nor whether he or she has fled for such treason or felony.

40. **No forfeiture of chattel which caused death.**

There shall be no forfeiture of any chattels which may have moved to or caused the death of any human being, in respect of the death.

PART VIII – EVIDENCE, ATTENDANCE OF WITNESSES, AMENDMENT, JUDGMENTS, ETC.

41. **Depositions may be read in evidence for other offence than that for which they were taken.**

Depositions taken in the preliminary or other investigation of any charge against any person may be read as evidence in the prosecution of that person for any other offence, upon the like proof, and in the same manner in all respects, as they may, according to law, be read in the prosecution of the offence with which that person was charged when the depositions were taken.

42. **Subpoena may issue to any witness within the State.**

If a witness in a criminal case, cognizable by indictment in a Court of criminal jurisdiction at any term, sessions, or sittings of such Court in any part of the State, resides in any part thereof not within the ordinary jurisdiction of the Court before which the criminal case is cognizable, the Court may issue a writ of subpoena directed to the witness, in like manner as if the witness were resident within the jurisdiction of the Court; and, in case the witness does not obey the writ of subpoena, the Court issuing the same may proceed against the witness for contempt or otherwise, or bind over the witness to appear at such days and times as may be necessary, and, upon default being made in such appearance, may cause the recognisances of the witness to be estreated, and the amount thereof to be sued for and recovered by process of law, in like manner as if the witness were resident within the jurisdiction of the Court.

43. **Attendance of witness bound by recognizance to attend.**

A person who is bound by recognizance to attend at any criminal sessions or sittings of the Court as a witness, whether for the prosecution or for the defence, in any case to be tried at the sessions or sittings, shall be bound to attend the Court, whether or

not he or she has received a subpoena or notice, on the day appointed for the trial of the case, and on subsequent days of the sessions or sittings, until the case is disposed of, or until he or she has been discharged by the Court from further attendance.

44. **Writs of subpoena.**

(1) A person whose attendance as a witness, whether for the prosecution or for the defence, is required in any case, and who has not been bound by recognizance to attend as a witness at the criminal sessions or sittings at which the case is to be tried, shall be summoned by a writ of subpoena.

(2) A subpoena referred to in subsection (1) shall issue in the name of the Queen, and shall be tested in the name of the Chief Justice.

45. **Duty to prepare subpoenas.**

(1) Subject to the provisions of subsection (2), it shall be the duty of the Registrar, on being furnished with the names and places of abode of any witnesses on behalf of the prosecution or defence whose attendance is required to be secured by subpoena, to prepare for service a writ or writs of subpoena directed to the witnesses, together with as many copies thereof, as there may be witnesses named in the writ or writs.

(2) Notwithstanding the provisions of subsection (1), it shall be lawful for the Registrar, before a subpoena directed to any witness whose attendance is required on behalf of the defence is prepared, to require to be satisfied by evidence on oath or otherwise that that witness is likely to be able to give material evidence:

Provided that nothing in this subsection shall be deemed to prejudice any right or power of the Court at the trial to call, or permit to be called, any witness.

(3) When an application is made to postpone any trial by reason of the absence of any witness, it shall be taken as *prima facie* evidence, liable nevertheless to be rebutted, that the party applying for the postponement has not exercised all due and necessary diligence to secure the attendance of the witness if it shall appear that no subpoena to the witness was requested four clear days at the least, before the first day of the criminal sessions or sittings.

46. **Service of subpoenas.**

The Registrar, by himself or herself or his or her assistants, shall with all diligence, serve, or attempt to serve, a copy of the writ of subpoena upon each witness to be served, and shall note every such service or attempted service with the time thereof upon the original writ of subpoena, and shall endorse and subscribe thereon a certificate of the service or non-service thereof, as the circumstances of the case may require, and such certificate shall be *prima facie* evidence of the facts stated in the certificate.

47. **Warrant for apprehension of witness not attending on recognizance.**

If a person who has been bound by recognizance to attend as a witness, whether for the prosecution or for the defence, at the trial of any case does not attend the Court on the day appointed for the trial of the case, and no reasonable excuse is offered for the non-attendance, the Court may issue a warrant to apprehend the person, and to bring him or

her, at a time to be mentioned in the warrant, before the Court in order to give evidence on behalf of the prosecution or of the defence, as the case may be.

48. **Warrant for apprehension of witness disobeying summons.**

If a person to whom a writ of subpoena is directed does not attend the Court at the time and place mentioned in the subpoena, and no reasonable excuse is offered for the non-attendance, then, after proof upon oath, to the satisfaction of the Court, that the writ was duly served, or that the person to whom the writ is directed wilfully avoids service, the Court, being satisfied, by proof upon oath, that he or she is likely to give material evidence, may issue a warrant to apprehend the person, and bring him or her, at a time to be mentioned in the warrant, before the Court in order to give evidence on behalf of the prosecution or of the defence, as the case may be.

49. **Fine for non-attendance of witness.**

A person who makes default in attending as a witness in either of the cases mentioned in sections 47 and 48 shall be liable, on the summary order of the Court, to a fine of one thousand dollars, and in default of payment, to imprisonment for two months.

50. **Warrant for apprehension of witness in first instance.**

(1) If a Judge is satisfied, by proof upon oath, that any person likely to give material evidence either for the prosecution or for the defence, on the trial of any case, will not attend to give evidence, without being compelled to do so the Judge may order that, instead of a subpoena being issued, a warrant shall be issued in the first instance for the apprehension of that person.

(2) A person who is arrested under a warrant issued under subsection (1) shall, if the trial of the case for which his or her evidence is required is appointed for a time which is more than twenty-four hours after the arrest, be taken before a Judge, and the Judge may, on his or her furnishing security by recognizance, to the satisfaction of the Judge, for his or her appearance at the trial, order him or her to be released from custody, or shall, on his or her failing to furnish the security, order him or her to be detained for production at the trial.

51. **Mode of dealing with witness refusing to be sworn, etc.**

(1) If a person attending the Court as a witness, either on his or her recognizance, or in obedience to a subpoena, or by virtue of a warrant, or being present in Court and being verbally required by the Court to give evidence in any case,

(a) refuses to be sworn as a witness;

(b) having been so sworn, refuses to answer any question put to him or her by or with the sanction of the Court; or

(c) refuses or neglects to produce any document which he or she is required by the Court to produce;

without in such case offering any sufficient excuse for the refusal or neglect, the Court may, if it thinks fit, adjourn or postpone the trial of the case for a period not exceeding eight days, and may in the meantime, by warrant, commit that person to prison.

(2) If the person, upon being brought before the Court at or before the adjourned or postponed trial, again refuses to do what is so required of him or her, the Court may, if it thinks fit, again adjourn or postpone the trial of the case, and commit him or her in like manner, and so again from time to time until such person consents to do what is so required of him or her.

(3) A person who is found guilty of refusing or neglecting to do what is required of him or her under this section shall also be liable, on the summary order of the Court, either in addition to or in lieu of such punishment, to a fine of one thousand dollars, and in default of payment, to imprisonment for two months.

[Amended by Acts 7/1976 and 9/1986]

(4) Nothing contained in this section shall affect the liability of the person referred to in this section to any other punishment or proceeding for refusing or neglecting to do what is required of him or her, or shall prevent the Court from disposing of the case in the meantime, according to any other sufficient evidence produced before it.

52. **Non-attendance of witness at adjourned trial.**

A witness who is present when the trial or further trial of a case is adjourned, or who has been duly notified of the time to which such trial or further trial is so adjourned, shall be bound to attend at such time, and in default of so doing, may be dealt with in the same manner as if he or she had failed to attend before the Court in obedience to a subpoena to attend and give evidence.

53. **Any person confined in any prison may be conveyed to the place at which such prisoner is required.**

When the attendance of any person, confined in any prison, is required in any Court of Criminal jurisdiction, in any case cognizable therein by indictment, the Court before whom the prisoner is required to attend, or any Judge of such Court, or of any superior Court, may, before, or during, any such term, or sitting, at which the attendance of the person is required, make an order upon the keeper, or other person, having the custody of the prisoner, to deliver such prisoner to the person named in the order to receive him or her, and such person shall, at the time prescribed in the order, convey the prisoner to the place at which such person is required to attend, there to receive and obey such further order as to the Court may seem meet.

54. **Crime or interest does not incapacitate a witness.**

No person offered as a witness shall, by reason of any alleged incapacity from crime or interest, be excluded from giving evidence on the trial of any criminal case, or in any proceeding relating, or incidental, to such case.

55. **Persons so offered as witnesses are compellable to give evidence.**

A person who is offered as a witness, shall be admitted and be compellable to give evidence on oath, or solemn affirmation where an affirmation is receivable, notwithstanding that such person has, or may have, an interest in the matter in question, or in the event of the trial in which he or she is offered as a witness, or of any proceeding

relating, or incidental, to such case, and notwithstanding that the person, offered as a witness, has been previously convicted of a crime or offence.

56. **Admissibility of statements in documents.**

(1) Subject to subsection (4) of this section, a statement made by a person in a document may be admissible in any criminal proceedings as evidence of any fact which direct oral evidence by him or her would be admissible if

(a) the requirements of one of the paragraphs of subsection (2) of this section are satisfied; or

(b) the requirements of subsection (3) of this section are satisfied,

except that such statement shall not be used in a case if it is the only evidence in that case.

(2) The requirements referred to in paragraph (a) of subsection (1) of this section are:

(a) that the person who made the statement is dead or by reason of his or her bodily or mental condition unfit to attend as a witness;

(b) that the person who made the statement is outside the Federation and it is not reasonably practicable to secure his or her attendance; or

(c) that all reasonable steps have been taken to find the person who made the statement, but that he or she cannot be found.

(3) The requirements referred to in paragraph (b) of subsection (1) of this section are:

(a) that the statement was made to a police officer or some other person charged with the duty of investigating offences; and

(b) that the person who made it cannot give oral evidence through fear or because he or she is kept out of the way.

(4) The provisions of subsection (1) of this section shall not render admissible a confession made by an accused person that would not be admissible under any law or practice.

(5) The court may, where a witness while giving oral evidence in the proceedings through fear does not continue to give evidence at all or does not continue to give evidence in connection with the subject matter of the statement, admit in evidence a statement made by that person in a document as evidence of any fact of which direct oral evidence by him or her would be admissible if

(a) the requirements of one of the paragraphs of subsection (2) of this section are satisfied; or

(b) the requirements of subsection (3) of this section are satisfied.

(6) A statement referred to in this section shall be made on oath before a person who is empowered to administer oaths, and shall be in the form set out in the Second Schedule to this Act.

(7) A statement referred to in this section if it is made by a child of tender age, then the person before whom the statement is made shall certify on the form that in his or

her opinion the child understood the difference between right and wrong and the nature and effect of an oath or if the child did not understand the nature and effect of the oath that the child possessed sufficient intelligence to justify the reception of the evidence.

(8) Counsel in the proceedings, after a statement referred to in this section has been tendered in evidence, shall be given an opportunity by the court, if he or she so wishes so to do, to inform the court including the jury as to what parts of the evidence tendered he or she would have challenged if the witness had attended court, and he or she shall inform the court what his or her case is in respect of those parts of the evidence he or she is challenging

(9) For the purposes of this section, "fear" shall be widely construed, except that the fear shall have connection with the accused or the case being heard by the court.

[Inserted by Act 10/1998; Amended by Act 3/2005]

57. **Admissibility of statements in documents received in course of trade.**

(1) A statement in a document may be admissible in criminal proceedings as evidence of any fact of which direct oral evidence would be admissible, if the following conditions are satisfied, that is to say,

(a) the document was created or received by a person in the course of a trade, business, profession or other occupation, or as the holder of a paid or unpaid office; and

(b) the information contained in the document was supplied by a person (whether or not the maker of the statement) who had, or may reasonably be supposed to have had, personal knowledge of the matters dealt with.

(2) The provisions of subsection (1) of this section shall apply whether the information contained in the document was supplied directly or indirectly but, if it was supplied indirectly, only if each person through whom it was supplied received it

(a) in the course of a trade, business, profession or other occupation; or

(b) as the holder of a paid or unpaid office.

(3) The provisions of subsection (1) of this section shall not render admissible a confession made by an accused person that would not be admissible under any law or practice.

(4) A statement prepared for the purposes of pending, or contemplated criminal proceedings, or of a criminal investigation shall not be admissible by virtue of the provisions of subsection (1) of this section unless

(a) the requirements of one of the paragraphs of subsection (2) of section 56 of this Act are satisfied;

(b) the requirements of subsection (3) of section 56 of this Act are satisfied; or

(c) the person who made the statement cannot reasonably be expected, having regard to the time which has elapsed since he or she made the statement and to all the circumstances, to have any recollection of the matters dealt with in the statement.

[Inserted by Act 10/1998. Sections 56 and 57 were originally sections 52A and 52B. Consequently sections 53 to 61 have been renumbered as sections 58, 59, 60, 61, 62, 63, 64, 65 and 66; Amended by Act 3/2005]

58. **Admissibility of statements made by hostile witness.**

(1) A statement made by a witness who is declared hostile in any proceedings in accordance with the provisions of sections 14, 15, and 16 of the Evidence Act shall be admissible in any criminal proceedings as evidence of the truth of any facts therein.

(2) Evidence given at a preliminary inquiry of an offence by a witness who is declared hostile in any proceedings in accordance with the provisions of sections 14, 15, and 16 of the Evidence Act shall be admissible in any criminal proceedings as evidence of the truth of any facts therein.

(3) Where there is any inconsistency between a statement made by a witness who is declared hostile in any proceedings in accordance with the provisions of sections 14, 15, and 16 of the Evidence Act and evidence given by that witness at a preliminary inquiry shall be a matter for the Magistrate, Jury or Judge, as the case may be, to determine which of that evidence is the truth.

(4) The matter of weight to be attached to the evidence given by the witness in accordance with the provisions of subsections (1) and (2) of this section shall be a matter for the Magistrate, Jury, or Judge, as the may be.

59. **Application of laws of procedure of England.**

Any matter of procedure which is not expressly provided for in this Act or any other Act shall be regulated, as the admission thereof, by the law of England and the practice of the Superior Courts of criminal law in England.

[Amended by Act 3/2005]

60. **Where second jury, same right to challenge as in the first jury.**

When any trial of an indictment for any felony or misdemeanour is had before a second jury, the Crown and the defendant, respectively, shall be entitled to the same challenges as they were entitled to with respect to the first jury.

61. **Mode of making up record on conviction.**

In making up the record of any conviction, or acquittal, on any indictment, it shall be sufficient to copy the indictment with the plea pleaded thereto, without any formal caption or heading; and the statement of the arraignment, and the proceedings subsequent thereto, shall be entered on record in the same manner as before the passing of this Act, subject to any such alterations in the forms of such entry as may, from time to time, be prescribed by any rule, or rules, of the High Court.

62. **Judgment not to be stayed or reversed for want of a similiter, etc.**

Judgment, after verdict, upon an indictment for any felony or misdemeanour shall not be stayed, or reversed, for want of a similiter, nor by reason that the jury process has been awarded to a wrong officer upon an insufficient suggestion, nor for any misnomer or misdescription of the officer returning such process, or of any of the jurors, nor because any person has served upon the jury who has not been returned as a juror by the Provost-

Marshal, or other officer; and, where the offence charged is an offence created by any Statute, or subjected to a greater degree of punishment by any Statute, the indictment shall, after verdict, be held sufficient, if it describes the offence in the words of the Statute creating the offence or prescribing the punishment, although they be disjunctively stated, or appear to include more than one offence or otherwise.

PART IX – ARRAIGNMENT AND TRIAL OF PERSONS OF UNSOUND MIND

[Heading amended by Act 7/1976 & 3/2005]

63. Procedure where person indicted appears on arraignment to be insane.

If any accused person appears, on arraignment, to be insane, the Court may order a jury to be empanelled to try the sanity of such person, and the jury shall thereupon, after hearing evidence for that purpose, find whether the person is or is not insane and unfit to take his or her trial.

64. Procedure where person indicted appears, during trial, to be insane.

If, during the trial of any accused person, such person appears, after the hearing of evidence to that effect or otherwise, to the jury before whom he or she is tried, to be insane, the Court shall in such case direct the jury to abstain from finding a verdict upon the indictment, and, in lieu thereof, to return a verdict that the person is insane:

Provided that a verdict under this section shall not affect the trial of any person so found to be insane for the offence for which he or she was indicted, in case he or she subsequently becomes of sound mind.

65. Special verdict where accused person found guilty, but insane at date of act or omission charged.

Where, in an indictment, any act or omission is charged against any person as an offence, and it is given in evidence on the trial of such person for that offence that he or she was insane, so as not to be responsible according to law for his or her actions at the time when the act was done or the omission made, then, if it appears to the jury before whom the person is tried that he or she did the act or made the omission charged, but was insane at the time when he or she did or made the same, the jury shall return a special verdict to the effect that the accused person was not guilty by reason of insanity.

[Amended by Act 7/1976]

66. Provision for custody of accused person found insane.

Where any person is found to be insane under the provisions of section 62 or section 63, or has a special verdict found against him or her under the provisions of section 64, the Court shall direct the finding of the jury to be recorded, and thereupon the Court may order the person to be detained in safe custody, in such place as the Court may direct until further order of the Court of Appeal or of the Governor-General under the provisions of the next succeeding section, as the case may be.

[Amended by Act 7/1976]

67. **Judge to report finding to Governor-General.**

(1) The Court shall immediately report the finding of the jury and the detention of such person to the Governor-General who shall order such person to be dealt with as a prisoner of unsound mind under the laws of Saint Christopher and Nevis for the time being in force for the care and custody of prisoners of unsound mind or otherwise as may be appropriate.

(2) The Governor-General shall not exercise his or her power under this section until after the expiry of the time for an appeal or, if an appeal is filed, until after the final determination of such appeal provided that the Governor-General may make such temporary orders as may be necessary or appropriate for the care and custody of a prisoner of unsound mind until the final determination of his or her case or appeal as the case may be.

(3) The Governor-General may vary or rescind any order made under the provisions of subsection (1) of this section and in the case of persons found to be insane under the provisions of section 57 or 58 may, when appropriate, direct that the prisoner be taken before the Court to stand trial.

(4) In the exercise of his or her powers under this section, the Governor-General shall act in accordance with the advice of the Minister designated by him or her under subsection (2) of section 66 of the Constitution.

[Substituted by Act 3/1987]

67. **Review of case by Minister.**

The Minister referred to in subsection (4) of section 61 may review the case of any prisoner of unsound mind detained under the provisions of this Act and for this purpose may appoint under the chairmanship of the Attorney General a Committee comprised of such persons as he or she shall think fit to examine such prisoner and make recommendations for his or her future care, custody or discharge.

[Inserted by Act 3/1987]

69. **Defence of diminished responsibility.**

(1) Where a person kills or is a party to the killing of another, he or she shall not be convicted of murder if he or she was suffering from such abnormality of mind (whether arising from a condition of arrested or retarded development of mind or any inherent causes or induced by disease or injury) as substantially impaired his or her mental responsibility for his or her acts and omissions in doing or being a party to the killing.

(2) On a charge of murder, it shall be for the defence to prove that the person charged is, by virtue of this section, not liable to be convicted of murder.

(3) A person who, but for this section, would be liable, whether as principal or as accessory, to be convicted of murder shall be liable instead to be convicted of manslaughter.

(4) The fact that one party to a killing is by virtue of this section not liable to be convicted of murder shall not affect the question whether the killing amounted to murder in the case of any other party to the killing.

[Inserted by Act 10/1998]

[Sections 67 and 68 were originally sections 61A and 61B. Consequently sections 62 to 90 have been renumbered as sections 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96 and 97]

PART X – PUNISHMENT-IMPRISONMENT

70. Similar punishment for capital offences whether by verdict or confession.

Any person, indicted for any offence made capital by any Statute, shall be liable to the same punishment, whether he or she be convicted by verdict or confession, and this, as well in the case of accessories as of principals.

71. Mode of punishment for felony not capital.

If any person is convicted of a felony not punishable with death, committed after a previous conviction for a felony, that person shall, on subsequent conviction, be imprisoned for a term not exceeding seven years, with or without hard labour, unless some other punishment be directed by any Statute for the particular offence, in which case the offender shall be liable to the punishment thereby awarded, and not to any other.

72. Rescue of a prisoner in custody and felonious rescue.

Any person who escapes, or rescues, or aids, in rescuing, any other person from lawful custody, or makes or causes any breach of prison, if such offence does not amount to felony, commits a misdemeanour, and shall be liable to be imprisoned for a period not exceeding two years, and any person who is convicted of a felonious rescue shall, in any case where no special punishment is provided by any Statute, be liable to be imprisoned for a term not exceeding seven years, with or without hard labour.

73. Procuring discharge of prisoner by false pretence.

Any person who, knowingly and unlawfully under colour of any pretended authority, directs, or procures, the discharge of any prisoner not entitled to be so discharged, commits a misdemeanour, and shall be liable to be imprisoned for a period not exceeding two years, and the person so charged shall be held to have escaped.

74. Prisoners escaping to undergo unexpired term with further imprisonment.

Any person who escapes from imprisonment shall, on being retaken, undergo, in the prison he or she escaped from, the remainder of his or her term unexpired at the time of his or her escape, in addition to the punishment which may be awarded for the escape.

75. Punishment of felonies less than capital.

A person who is convicted of a felony, not punishable with death, shall be punished in the manner (if any) prescribed by the Statute, or Statutes, especially relating to such felony, and a person convicted of any felony, for which no punishment is specially provided, shall be liable to be imprisoned for a term not exceeding seven years.

76. **Where no definite term of imprisonment is fixed by law.**

When imprisonment is to be awarded for any offence, and no definite period is fixed by law, the term of such imprisonment shall always be in the discretion of the Court passing the sentence.

77. **Sentence to commence from day of passing same.**

The period of imprisonment, in pursuance of any sentence, shall commence on and from the day of passing such sentence, but no time, during which the convict may be out on bail, shall be reckoned as part of the term of imprisonment to which he or she is sentenced.

78. **Imprisonment for a subsequent felony, before expiration of imprisonment for prior offence.**

Whenever sentence is passed for a felony on a person already imprisoned under sentence for another crime, the Court may award imprisonment, for the subsequent offence, to commence at the expiration of the imprisonment to which such person has been previously sentenced; and, where such person is already under sentence of imprisonment, the Court may award sentence, for the subsequent offence, to commence at the expiration of the imprisonment for which such person has been previously sentenced, although the aggregate term of imprisonment may exceed the term for which such punishment could otherwise have been awarded

79. **Persons convicted may be sentenced by the Court to be imprisoned, etc.**

When a person has been convicted of an offence for which imprisonment may be awarded, then the Court may sentence the offender to be imprisoned, or, if hard labour be part of the punishment, to be imprisoned and kept to hard labour.

PART XI – JUDGMENT OF DEATH

80. **Execution of prisoner under sentence of death.**

Whenever any offender has been convicted, before any Court of criminal jurisdiction, of an offence for which the offender is liable to, and receives, sentence of death, the Court shall order and direct execution to be done on the offender in the manner provided by law.

81. **Judge to report to Governor-General case of any prisoner under sentence of death, and Judge in certain cases may reprieve.**

In the case of a prisoner sentenced to the punishment of death, the Judge, before whom the prisoner has been convicted, shall, without delay, make a report of such case to the Governor-General previously to the sentence being carried into execution; and, if the Judge thinks the prisoner ought to be recommended for the exercise of the Royal mercy, or if from the non-decision of any point of law reserved in the case, or from any other causes, it is necessary to delay the execution, he or she, or any other Judge of the same Court, or who might have held, or sat in, such Court, may, from time to time, either in term, or in

vacation, reprieve such offender for such period, or periods, beyond the time fixed for the execution of sentence, as may be necessary for the consideration of the case by the Crown.

[Amended by Act 6/1976]

82. **Prisoner, after sentence of death, to be kept apart in safe custody.**

A person sentenced to suffer death shall, after judgment, be confined, in some safe place within the prison, apart from all other prisoners, and no person but the keeper of the prison and his or her servants, the medical officer or surgeon of the prison, a chaplain or a minister of religion, shall have access to the convict without the permission in writing of the Court or Judge, before whom the convict was tried, or of the Provost Marshal.

83. **Governor-General to appoint place of execution.**

Judgment of death to be executed on any prisoner shall be carried into effect in such place as the Governor-General shall direct.

[Amended by Act 6/1976]

84. **Execution within walls of prison.**

(1) In case an execution is directed to take place within the walls of the prison, the following subsections of this section numbered from two to thirteen inclusive, shall be applicable to such execution.

(2) The Provost-Marshal charged with the execution, and the keeper and medical officer or surgeon of the prison, and such other officers of the prison, and such persons as the Provost Marshal requires, shall be present at the execution.

(3) Any Justice of the Peace and such relatives of the Prisoner or other persons as it seems to the Provost Marshal proper to admit within the prison for the purpose, and any minister of religion who may desire to attend, may also be present at the execution.

(4) As soon as may be after judgment of death has been executed on the offender, the medical officer or surgeon of the prison shall examine the body of the offender, and shall ascertain the fact of death, and shall sign a certificate thereof, and deliver the same to the Provost-Marshal.

(5) The Provost-Marshal and the keeper of the prison, and such Justices and other persons present (if any) as the Provost Marshal requires, or allows, to be present, shall also sign a declaration to the effect that judgment of death has been executed on the offender.

(6) The duties imposed upon the Provost-Marshal, keeper, medical officer or surgeon by subsections (2), (3), (4) and (5) may and shall, in his or her absence, be performed by his or her lawful deputy or assistant, or other officer, or person ordinarily acting for him or her or conjointly with him or her, in the performance of his or her duties.

(7) A Coroner of the district, or place, wherein judgment of death is executed on any offender, shall, within twenty-four hours after the execution, hold an inquest on the body of the offender, and the jury at the inquest shall enquire into and ascertain the identity of the body, and whether judgment of death was duly executed on the offender, and the inquisition shall be in duplicate, and one of the originals shall be delivered to the Provost-Marshal.

(8) No officer of the prison, or prisoner confined therein, shall, in any case, be a juror on the inquest.

(9) The Minister may make such rules and regulations, to be observed on the execution of judgment of death in every prison, as he or she may deem expedient for the purpose, as well of guarding against any abuse in such execution, as also of giving greater solemnity to the same, and of making known without the prison walls the fact that such execution is taking place.

(10) If any person, knowingly and wilfully, signs any false certificate, or declaration, required with respect to any execution, he or she commits a misdemeanour, and, on conviction thereof, shall be liable, at the discretion of the Court, to imprisonment for any term less than two years.

(11) Every certificate and declaration, and the duplicate of the judgment required by this Act, shall, in each case, be sent, with all convenient speed, by the Provost-Marshal to the Minister; and printed copies of the same several instruments shall, as soon as possible, be exhibited, and shall, for twenty-four hours at least, be kept exhibited on, or near, the principal entrance of the prison within which judgment of death is executed.

[Amended by Act 3/1987]

(12) The omission to comply with any provision of the preceding ten sub-sections of this Act shall not make the execution of death illegal in any case where such execution would otherwise have been legal.

(13) Except in so far as is hereby otherwise provided, judgment of death shall be carried into effect in the same manner as if the said eleven sub-sections had not been passed.

[Note: The introductory paragraph of this section has been converted into a subsection and the other subsections renumbered accordingly]

PART XII – PARDONS

85. Crown may extend Royal mercy.

The Crown may extend the Royal mercy to any person sentenced, by virtue of any Statute, to imprisonment, although such person be imprisoned for non-payment of money to some party other than the Crown.

86. When pardon granted, offender still liable for any other felony or offence.

When the Governor-General, acting under section 66 of the Constitution, exercises the Prerogative of Mercy in favour of an offender convicted of an offence punishable with death or otherwise and by warrant under his or her hand, grants to such an offender either a free or a conditional pardon, the discharge of such offender out of custody, in the case of a free pardon, and the performance of the condition, in the case of a conditional pardon, shall have the effect of a pardon under the Great Seal of such offenders as to the felony for which pardon has been granted; but no free pardon, nor any discharge in consequence thereof, nor any conditional pardon, nor the performance of the condition thereof, in any of the cases aforesaid, shall prevent, or mitigate, the punishment to which such offender

might otherwise be lawfully sentenced on subsequent conviction for any felony, or offence, other than that for which the pardon was granted.

[Amended by Act 3/1987]

87. **Commutation of sentence.**

When the Governor-General, acting under section 66 of the Constitution, commutes a sentence of death to imprisonment an instrument under his or her hand declaring such commutation of sentence, shall be sufficient authority to any of Her Majesty's Judges, or Justices, having jurisdiction in such cases, or to any officer to whom such instrument is addressed, to give effect to such commutation, and to do all such things, and to make such orders, and to give such directions, as may be requisite for the charge, or custody, of such convict, and for his or her conduct to, and delivery at, a prison, and his or her detention therein, according to the terms on which his or her sentence has been commuted.

[Amended by Act 3/1987]

88**. Nothing herein to affect the Royal Prerogative.**

Nothing in this Act shall, or doth, in any manner limit, or affect, Her Majesty's Royal Prerogative of Mercy.

PART XIII – UNDERGOING SENTENCE EQUIVALENT TO PARDON

89. **Imprisonment to have the effect of a pardon, but the person pardoned is liable for subsequent felony.**

When any offender has been convicted of a felony not punishable with death, and has endured the punishment to which such offender was adjudged, or if such felony be punishable with death and the sentence has been commuted, then, if such offender has endured the punishment to which his or her sentence was commuted, the punishment so endured shall, as to the felony whereof the offender was so convicted, have the like effects and consequences as a pardon under the Great Seal; but nothing herein contained, nor the enduring of such punishment, shall prevent, or mitigate, any punishment to which the offender might otherwise be lawfully sentenced on a subsequent conviction for any other felony.

PART XIV – GENERAL PROVISIONS

90. **Felonies within Admiralty jurisdiction.**

When any felony, punishable under the laws of the State has been committed within the jurisdiction of any Court of Admiralty in the State, the same may be dealt with, enquired of, and tried and determined, in the same manner as any other felony committed within the State.

91. **Nothing to affect Her Majesty's land or naval forces**

Nothing contained in this Act shall alter, or affect, any of the laws relating to the government of Her Majesty's land or naval forces.

Revision Date: 31 Dec 2009

92. **Continuous bail.**

Where, on any adjournment of a criminal proceeding, either in the High Court or before a Magistrate, the accused is admitted to bail the recognizance may be conditioned for his or her appearance at every time and place to which the proceeding may be, from time to time, adjourned:

Provided that nothing contained in this section shall prejudice the power of the Court or Magistrate, at any subsequent adjournment of the proceeding, to refuse to admit the accused to bail, or, as a condition of such person being admitted to bail, to require him or her to enter into another recognizance as the Court or Magistrate may direct.

93. **Taking of recognisance of bail.**

For removing doubts it is hereby declared that where, as a condition of the release of any person, he or she is required to enter into a recognizance with sureties, the recognisances of the sureties may be taken separately, and either before or after the recognisances of the principal; and, if so taken, the recognisances of the principal and sureties shall be as binding as if they had been taken together and at the same time.

94. **Definition of "month" in sentence of imprisonment.**

In any sentence of imprisonment the word "month" shall, unless the contrary is expressed, be construed as meaning "calendar month".

95. **Recovery of costs.**

(1) Where by virtue of any law in force in the State the Court makes an order for the payment of costs against any offender convicted on indictment by the Court, such order shall be enforced (except where the law under which the order is made provides some other method of enforcement), by the issue of a writ of execution to levy upon and sell the goods, chattels, lands and tenements of the person against whom the order is made; and in case such person shall not have sufficient goods, chattels, lands and tenements on which a levy may be made to satisfy such order, he or she shall undergo a sentence of imprisonment with or without hard labour for a period not exceeding twelve months unless such costs are sooner paid.

(2) Where any offender convicted as aforesaid has made default in complying with an order of the Court for the payment of costs within the time limited therein for that purpose, a writ of execution in the form set out in the First Schedule shall be issued against him or her from the Registrar's Office to levy upon and sell the goods, chattels, lands and tenements of such offender.

(3) The writ, which shall be delivered to the Provost-Marshal, shall be his or her authority for levying and recovering the sum due for the said costs, and for taking into custody the body of the said offender in case sufficient goods, chattels, lands and tenements shall not be found whereon levy may be made.

96. **Power of High Court to fine on conviction of felony.**

(1) Where any offender is convicted by the Court for felony (not being a felony the sentence for which is fixed by law) the Court shall have power to fine the offender in

lieu of or in addition to dealing with him or her in any other manner in which the Court has power to deal with him or her.

(2) For the purposes of this section, the expression "a felony the sentence for which is fixed by law" means a felony for which the Court is required to sentence the offender to death or imprisonment for life or to detention during her Majesty's pleasure.

97. **Power of Court in relation to fines.**

(1) Subject to the provisions of this section, where a fine is imposed by the Court an order may be made in accordance with the provisions of this section

(a) allowing time for the payment of the amount of the fine;

(b) directing payment of the said amount by instalments of such amounts and on such dates respectively as may be specified in the order;

(c) fixing a term of imprisonment which the person liable to make the payment is to undergo if any sum which he or she is liable to pay is not duly paid or recovered:

Provided that any term of imprisonment fixed under this sub-section in default of payment of a fine shall not exceed twelve months.

(2) Any order made under this section providing for any such matters as are mentioned in paragraph (a) or paragraph (b) of the foregoing sub-section may be made by the Court upon application in writing to the Registrar of the Court and may amend any previous order made under this section so far as it provides for those matters:

Provided that no application shall be made under this subsection after the refusal of a previous application made thereunder.

(3) Where any person liable for the payment of a fine to which this section applies is sentenced by the Court to, or is serving or otherwise liable to serve, a term of imprisonment, the Court may order that any term of imprisonment fixed under paragraph (c) of sub-section (1) shall not begin to run until after the end of the first-mentioned term of imprisonment.

98. **Incidental provisions as to fines.**

(1) Save as is otherwise provided in sub-section (3), all fines payable by virtue of section 96 shall be paid to the Registrar of the Court who shall issue a receipt therefor, and where default is made in payment of the fine or any instalment thereof, the Registrar shall cause a warrant to issue against the defaulter committing him or her to prison, and the warrant shall be in the form set out in the First Schedule.

(2) Where an order is made directing payment of a fine by instalments and default is made in the payment of any one instalment, the same proceedings may be taken as if default had been made in payment of all the instalments then remaining unpaid.

(3) Where an order is made fixing a term of imprisonment in default of payment of a fine, then

(a) on payment of the fine to the Registrar of the Court, or (if the person in respect of whom the order was made is in prison) to the keeper of

the prison, the order shall cease to have effect; and, if the said person is in prison and is not liable to be detained for any other cause, he or she shall forthwith be discharged;

(b) on payment to the Registrar of the Court or to the keeper of the prison of a part of the fine, the total number of days in the term of imprisonment shall be reduced proportionately, that is to say, by such number of days as bears to the said total number of days less one day the proportion most nearly approximating to, without exceeding, the proportion which the part paid bears to the amount of the fine.

(4) Any sums received by the keeper of the prison under the last foregoing subsection shall be paid by him or her to the Registrar of the Court.

FIRST SCHEDULE.

(Sections 94(2) and 97(1))

WRIT OF EXECUTION.

IN THE SUPREME COURT OF THE EASTERN CARIBBEAN STATES

.....CIRCUIT.

ELIZABETH THE SECOND, by the Grace of God, of the United Kingdom of Great Britain and Northern Ireland, and of Her other Realms and Territories, Queen, Head of the Commonwealth, Defender of the Faith.

To the Provost Marshal, ... Circuit.

WE command you that of the goods and chattels and lands and tenements of A.B. of .....you cause to be levied the sum of $..... , which said sum of money the said A.B. was by a judgment of our said Supreme Court, bearing date the .....day of ....., 20 ..... , adjudged to pay for costs and, in case you cannot find sufficient goods and chattels and lands and tenements of said A.B. then you are to take the body of the said A.B. and lodge him or her in Her Majesty's Prison at ..... in this State for a period of ..... months unless the said sum of $ ..... . be sooner paid, for which you will be answerable, and have you then and there this Writ.

Witness the Honourable....., Chief Justice of Our Supreme Court, the ..... day of ....., 20.....

Registrar.

WARRANT OF COMMITTAL.

IN THE SUPREME COURT OF THE EASTERN CARIBBEAN STATES

.....CIRCUIT.

To each and all the constables of the State of .....and .....

To the Keeper of Her Majesty's Prison in the said State.

THE QUEEN vs. A.B.

A.B., hereinafter called the accused, was this day/ on the .....day of ..... 20....., convicted by the High Court sitting in the ..... Circuit of the offence of ..... and ordered by the said Court to pay a fine (*here set forth the adjudication shortly*) And the accused has (paid part of the said fine, to wit, the amount of $ ..... but has) made default in payment (of a balance of $ .....) It is ordered that the accused be imprisoned in Her Majesty's Prison aforesaid and there kept for a period of months/ weeks/days unless the said fine/balance be sooner pa . You the said constables are hereby commanded to take the accused and convey him or her to the said Prison and there deliver him or her to the Keeper thereof together with this Warrant; and you the Keeper of the said Prison are hereby authorised to receive the accused into your custody, and keep him or her for the period of ..... months/ weeks/days unless the said fine/balance be sooner paid, and if the said sum/balance is paid to you the Keeper of the said Prison, you shall forthwith discharge the accused from your custody unless he or she is liable to be detained in the said Prison for any other cause.

Revision Date: 31 Dec 2009

Dated the .....day of .....20.....

By order of the Court,

Registrar.

Fine .....$

.....$

Imprisonment in default

.....$

SECOND SCHEDULE

(Section 56)

Form of Witness' Statement

Witness Statement

(Criminal Procedure Act, Cap. 4.03, Section 56)

Statement of _____

Age _____

Occupation _____

Address _____

_____

_____

I _____ do swear or affirm that I make this statement (recorded on _____ pages each signed by me) and that what is stated in this statement is the truth and nothing but the truth.

This statement is true to the best of my knowledge and belief and I have made it knowing that if it is tendered in evidence I shall be liable to prosecution if I have wilfully stated anything which I know to be false or do not believe to be true.

Signature witnessed

Dated:

Signature of Deponent: _____ By _____

Certification: (in case of a child of tender age)

I _____ before whom this statement has been made certify that the child who made the statement understood the difference between right and wrong and the nature and effect of an oath/did not understand the nature of an oath but was possessed of sufficient intelligence to justify the reception of the evidence (delete what is not applicable).

Signature of person before whom the statement is made by the child.

[Schedule inserted by Act 10/1998]