BERMUDA

CRIMINAL CODE ACT 1907

1907 : 13

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[*preamble and words of enactment omitted*]

DIVISION I

GENERAL PROVISIONS RELATING TO CRIMINAL LAW

PART I

INTRODUCTORY

Citation and arrangement of Act

Citation

1 This Act may be cited as the Criminal Code.

Arrangement of Act

2 *[Omitted: see Arrangement of Sections]*

Interpretation and construction

Interpretation

3 In this Act, the following words and expressions shall, when not inconsistent with the context, have the meanings respectively assigned to them in this section, that is to say—

"anti-social behaviour" means behaviour by a person which causes or is likely to cause harassment, alarm or distress to one or more other persons not of the same household as the person;

"bodily harm" means any bodily injury which interferes with health or comfort;

"child" means a person under the age of eighteen years;

"circumstance of aggravation" means any circumstance by reason whereof an offender is liable to a greater punishment than that to which he would be liable if the offence were committed without the existence of that circumstance;

"clerk" and "servant" include—

(i) any person employed for any purpose as or in the capacity of a clerk or servant, or as a collector of money, although temporarily only, or although employed also by persons other than the person alleged to be his employer, or although employed to pay as well as to receive money; and

(ii) any person employed as or in the capacity of a commission agent for the collection or disbursement of money or in any similar capacity, although he has no authority from his employer to receive money or other property on his account;

"community service order" has the meaning given in section 71A;

"company" means an incorporated company;

"complainant" means the victim of an alleged offence;"

"corrective training" means corrective training imposed under the Young Offenders Act 1950 [*title 10 item 33*];

"Court" or "the Court" means the Supreme Court, and, in the case of an offence cognizable by a court of summary jurisdiction, includes such court;

"criminally responsible" means liable to punishment for an offence; and "criminal responsibility" means liability to punishment for an offence;

"defective"*[Repealed by 2019 : 36 s. 2]*

"dwelling-house" includes any building or structure, or part of a building or structure, which is for the time being kept by the owner or occupier for the residence therein of himself, his family or servants, or any of them; and a building or structure adjacent to, and occupied with, a dwelling-house is deemed to be part of the dwelling-house if there is a communication between such building or structure and the dwelling-house, either immediate or by means of a covered and enclosed passage leading from the one to the other, but not otherwise; it is immaterial that any such building or structure is from time to time uninhabited;

"explosive substance" includes a gaseous substance in such a state of compression as to be capable of explosion;

"false pretence" has the meaning given in section 368;

"firearm" means—

(i) any lethal barrelled weapon of any description from which any shot, bullet or other missile can be discharged;

(ii) any weapon of whatever description designed or adapted for the discharge of any noxious liquid, noxious gas or other noxious thing;

(iii) any grenade, bomb or other like missile, whether capable of being used with a weapon described in subparagraph (i) or (ii) or not;

and "imitation firearm" means anything which has the appearance of being a firearm within the meaning of subparagraph (i), whether it is capable of discharging any shot, bullet or other missile or not;

"grievous bodily harm" means any bodily harm of such a nature as seriously to interfere with health or comfort;

"have in possession" includes having under control in any place whatsoever, whether for the use or benefit of the person of whom the term is used or of another person, and although another person has the actual possession or custody of the thing in question;

"imitation firearm" has the meaning given in the paragraph defining "firearm";

"indictable offence" means an offence declared, in this Act, to be treason, a felony or a misdemeanour, and includes any offence in respect of which an accused person is triable on indictment whether or not he is also triable summarily;

"indictment" means a written charge preferred against an accused person with a view to his trial before the Supreme Court;

"knowingly", used in connection with any expression denoting uttering or using, implies knowledge of the character of the thing uttered or used;

"maim" means the destruction or permanent disabling of any external or internal organ, member or sense;

"Minister" means the Minister responsible for Justice;

"money" includes bank notes, bank drafts, bills of exchange, cheques, and any other orders, warrants, authorities or requests for the payment of money;

"motor car" has the meaning given in section 2 of the Motor Car Act 1951 [*title 21 item 4*];

"night" or "night time" means the interval between eight o'clock in the evening and six o'clock in the morning;

"order for conditional discharge" means an order for conditional discharge made under section 69;

"person" and "owner", and like expressions, when used with reference to property, include corporations of all kinds, and any other associations of persons capable of owning property, and also Her Majesty;

"person employed in the public service" includes officers and men of the Royal Bermuda Regiment within the meaning of the Defence Act 1965 [*title 7 item 21*], and police officers and persons employed to execute any process of any court of justice;

"police officer" means any member of the Bermuda Police Service and any other person who, at the material time, has, by virtue of the Police Act 1974 [*title 10 item 21*], the powers and immunities of a police officer;

"postal packet" means a letter, post card, reply post card, newspaper, book packet, pattern or sample packet, or parcel, an official notice, and every packet or article transmissible by post;

"postage" means the duty chargeable for the transmission of postal packets;

"probation officer" means a person appointed to be a probation officer under section 70E;

"probation order" means an order made under section 70;

"probationer" means a person in respect of whom a probation order has been made;

"public place" includes any highway or estate road and any other premises or place to which at the material time the public has or is permitted to have access, whether on a payment or otherwise;

"punishable with imprisonment", in relation to an offence, means punishable with imprisonment otherwise than in default of payment of any sum of money for failing to do or abstain from doing anything required to be done or left undone;

"riot" means a riot within the meaning of section 98;

"sending" means the process by which an accused is sent for trial to the Supreme Court pursuant to Part IV of the Criminal Jurisdiction and Procedure Act 2015, and cognate expressions shall be construed accordingly;

"the senior training school" means the senior training school established under the Young Offenders Act 1950 [*title 10 item 33*];

"severe mental impairment" has the meaning given in section 183(3);

"summary offence" means an offence in respect of which an accused person is triable only by a court of summary jurisdiction;

"uncorroborated testimony" means testimony which is not corroborated;

"utter" includes using or dealing with, and attempting to use or deal with, and attempting to induce any person to use, deal with, or act upon, the thing in question;

"valuable security" includes any document which is the property of any person, and which is evidence of the ownership of any property or of the right to recover or receive any property;

"vessel" includes a ship, a boat, and every other kind of vessel used in navigation either on the sea or in inland waters;

"wound" means any incision or puncture which divides or pierces any exterior membrane of the body; and any membrane is exterior, for the purposes of this definition, which can be touched without dividing or piercing any other membrane.

[Section 3 amended by 1993:2 effective 1 June 1993, by 1994:20 effective 1 August 1994, by 1997:37 effective 6 May 1999; "order for conditional discharge", "probation officer" and "probation order" substituted by 2001:29 s.2 effective 29 October 2001; "anti-social behaviour", "Minister" and "public place" inserted by 2010 : 5 s. 2 effective 19 March 2010; "sending" inserted by 2015 : 38 s. 89 effective 6 November 2015; Section 3 amended by 1993:2 effective 1 June 1993, by 1994:20 effective 1 August 1994, by 1997:37 effective 6 May 1999; "order for conditional discharge", "probation officer" and "probation order" substituted by 2001:29 s.2 effective 29 October 2001; "anti-social behaviour", "Minister" and "public place" inserted by 2010 : 5 s. 2 effective 19 March 2010; "sending" inserted by 2015 : 38 s. 89 effective 6 November 2015; Section 3 definition "person employed in the public service" amended by 2015 : 48 s. 25 effective 1 November 2017; Section 3 definitions "child" and "severe mental impairment" inserted, and definition "defective" repealed by 2019 : 36 s. 2 effective 1 November 2019]

Construction of "on conviction on indictment"

4 The expression "on conviction on indictment", or any expression having the like meaning, where used in this or any other Act in relation to any offence or the punishment for any offence, shall be taken to imply that a person charged with that offence is triable on indictment before the Supreme Court, and that the offence is an indictable offence within the meaning and for the purposes of the Indictable Offences Act 1929 [*title 8 item 32*].

Construction of "on summary conviction" etc

5 The expression "on summary conviction", or "on conviction before a court of summary jurisdiction", or any expression having the like meaning, when used in this or any other Act in relation to any offence or the punishment for any offence, shall be taken to imply that a person charged with that offence is triable and may be dealt with summarily by a court of summary jurisdiction.

Carnal knowledge

6 When the expression "carnal knowledge" or the expression "carnal connection" is used in defining an offence, it is implied that the offence, so far as regards that element of it, is complete upon penetration.

Arrest without warrant

7 (1) The expression "the offender may be arrested without warrant" means that the provisions of this Act relating to the arrest of offenders or suspected offenders without warrant are applicable to the offence in question, either generally or subject to such conditions, if any, as to time, place or circumstance, or as to the person authorized to make the arrest, as are specified in the particular case.

(2) The expression "the offender cannot be arrested without warrant" means that the provisions of this Act relating to the arrest of offenders or suspected offenders without warrant are not applicable to the offence in question, except subject to such conditions, if any, as to the time, place or circumstance, or as to the person authorized to make the arrest, as are specified in the particular case.

Construction of Acts

8 The following rules shall, unless the context otherwise requires, apply with respect to the construction of Acts—

(a) when in any Act the expression "larceny" or "embezzlement" is used, it shall be taken that reference is intended to the offence of stealing;

(b) when in any Act reference is made to any offence by any specific name, it shall be taken that reference is intended to the offence which, under this Act, is constituted by the act or omission that would heretofore have constituted the offence referred to;

(c) when in any Act reference is made to any enactment hereby repealed, it shall be taken that reference is intended to the corresponding or substituted provision of this Act.

Saving for other Acts, the Royal Prerogative etc

Saving for other Acts

9 Nothing in this Act shall be construed so as to abridge or derogate from any provision of the Evidence Act 1905 [*title 8 item 10*], or of the Young Offenders Act 1950 [*title 8 item 33*], or of the Prisons Act 1979 [*title 10 item 32*]

Saving for Royal Prerogative

10 Nothing in this Act shall be construed so as to affect Her Majesty's Royal Prerogative of Mercy or any power vested in the Governor, acting as the representative of Her Majesty, to exercise such Royal Prerogative on behalf of Her Majesty, or to grant a pardon either free or subject to conditions, or any remission of any sentence, or any respite of the execution of any sentence.

Saving for powers of Supreme Court with respect to contempt of court

11 Nothing in this Act shall affect the authority of the Supreme Court to punish a person summarily for the offence commonly known as contempt of court.

PART II

CLASSIFICATION OF OFFENCES: APPLICATION OF CRIMINAL LAW: PARTIES TO OFFENCES: ATTEMPTS ETC TO COMMIT OFFENCES

Constitution and classification of offences

Definition of offence

12 Any act or omission which is punishable by or under any provision of law constitutes an offence; and any such act or omission is referred to as an offence, and cognate expressions shall be construed accordingly.

Jurisdiction in respect of various offences

13 (1) Unless otherwise expressly provided in any law, a person accused of an indictable offence cannot be prosecuted or convicted in respect of it except upon indictment.

(2) A person accused of a summary offence may only be prosecuted or convicted in respect of it before a court of summary jurisdiction:

Provided that, if a person is charged with two or more offences one of which is an indictable offence, then if that indictable offence is to be dealt with on indictment and the other offence or offences are such as might be joined in the same indictment with such indictable offence, that person may be prosecuted and convicted on indictment in respect of all or any of the offences with which he stands charged.

Classification of unclassified indictable offences constituted by other Acts

14 Where by or under any other Act any indictable offence is constituted, and it is not stated whether the offence is a felony or a misdemeanour, then that offence shall, for the purposes of the application of the general provisions of this Act relating to offences and criminal procedure, be deemed to be a misdemeanour.

Application of criminal law

Application of general provisions of this Act

15 The general provisions of this Act relating to offences and criminal procedure shall apply, unless it is otherwise expressly provided, in relation to offences constituted or punishable by or under any other Act as well as in relation to the offences specifically constituted by and punishable under this Act.

16 *[Section 16 repealed by 2005:15 s.3 effective 1 April 2006]*

Restriction on liability to trial and punishment in Bermuda for indictable offences

17 No person shall be liable to be tried or punished in Bermuda, as for an indictable offence, except under the express provisions of this Act or of some other Act, or under the express provisions of an Act of the Parliament of the United Kingdom—

(a) which is expressly applied to Bermuda; or

(b) which is in force in all parts of Her Majesty's dominions; or

(c) which authorizes the trial and punishment in Bermuda of offenders who have at places out of Bermuda committed offences against the laws of the United Kingdom.

Effect of changes in law

18 (1) A person cannot be punished for doing an act or making an omission unless the act or omission constituted an offence under the law in force when it occurred; nor unless doing the act or making the omission under the same circumstances would constitute an offence under the law in force at the time when he is charged with the offence.

(2) If the law in force when the act or omission occurred differs from that in force at the time of conviction, the offender cannot be punished to any greater extent—

(a) than was authorized by the former law; or

(b) than is authorized by the latter law.

Trial in certain cases of homicide

19 If any person is unlawfully hurt upon the sea, or at any place out of Bermuda, and dies in consequence thereof in Bermuda, or if any person is unlawfully hurt in Bermuda, and dies in consequence thereof upon the sea, or at any place out of Bermuda, then every such offence, whether the offence amounts to murder or manslaughter, or

being accessory to murder or manslaughter, may be dealt with in Bermuda in the same manner in all respects as if such offence had been committed wholly in Bermuda.

Offences procured or counselled by persons out of Bermuda

20 (1) Any person who, having while out of Bermuda procured another person to do an act or make an omission in Bermuda of such nature that, if he had himself done the Act or made the omission in Bermuda, he would have been guilty of an offence, afterwards comes into Bermuda, is by such coming into Bermuda guilty of an offence of the same kind, and is liable to the same punishment, as if he had himself done the act or made the omission in Bermuda.

(2) Any person who, having while out of Bermuda counselled or procured the commission of an offence which is actually committed in Bermuda, afterwards comes into Bermuda, is by such coming into Bermuda guilty of an offence of the same kind, and is liable to the same punishment, as if he had been in Bermuda when the offence was committed.

Offences procured in Bermuda to be committed out of Bermuda

21 (1) Any person who while in Bermuda procures to another person to do an act or make an omission at a place out of Bermuda of such a nature that, if he had himself done the act or made the omission in Bermuda, he would have been guilty of an offence, and that, if he had himself done the act or made the omission, he would have been guilty of an offence under the laws in force in the place where the act or omission is done or made, is guilty of an offence of the same kind, and is liable to the same punishment, as if the act had been done or the omission had been made in Bermuda, but so that the punishment does not exceed that which he would have incurred under the laws in force in the place where the act was done or the omission was made, if he had himself done the act or made the omission.

(2) A prosecution cannot be instituted under this section except at the request of the Government of the State having jurisdiction in the place where the act or omission occurs.

Offender may be prosecuted under this Act or some other Act.

22 When an offender is punishable under this Act, and also under some other Act, he may be prosecuted and convicted under this Act or such other Act, so, however, that he is not twice punished for the same act or omission.

Persons not to be twice punished for same offence

23 A person cannot be twice punished either under this Act or under any other law for the same act or omission, unless the act or omission is such that by means thereof he causes the death of another person, in which case he may be convicted of the offence of which he is guilty by reason of causing such death, notwithstanding that he has already been convicted of some other offence constituted by the act or omission.

Former conviction or acquittal

24 It is a defence to a charge of any offence to show that the accused person has already been tried, and convicted or acquitted, before a court of competent jurisdiction, upon indictment or information, in respect of an offence of which he might have been convicted of the offence with which he is charged.

Relation of civil actions to criminal law

Civil remedies

25 (1) When by this Act any act is declared to be lawful, no action can be brought in respect thereof:

Provided that nothing in Part XII shall affect any right of action arising from the publication of any defamatory matter which any person would have had against another person if that Part had not been enacted.

(2) Except as aforesaid, this Act shall not affect any right of action which any person would have had against another person if this Act had not been passed, nor shall the omission from this Act of any penal provision in respect of an act or omission which before 1 September 1908 constituted an actionable wrong affect any right of action in respect thereof.

(3) Except when expressly so provided, the prosecution or conviction of a person for an offence does not affect any civil remedy which any person aggrieved by the offence may have against the offender.

Effect of conviction in respect of offence relating to property on civil proceedings etc

26 (1) A person who has been summarily convicted of any offence relating to property under this Act, and who has paid the fine or sum adjudged to be paid under the conviction, together with the costs, if any, or has suffered the imprisonment adjudged in the first instance, or has received the Royal Mercy, or has been discharged without punishment upon making satisfaction to the party aggrieved, or whose sentence has been conditionally suspended, is not liable to any civil proceedings for the same cause at the suit of the person on whose information he was convicted.

(2) If civil proceedings have been taken against any person in respect of any act done by him which is an offence of the nature hereinbefore described, he cannot afterwards be prosecuted for the same cause, as for an offence, on the information of the person by whom the civil proceedings were taken.

Parties to offences

Principal offenders

27 (1) When an offence is committed, each of the following persons is deemed to have taken part in committing the offence, and to be guilty of the offence, and may be charged with actually committing it—

(a) every person who actually does the act or makes the omission which constitutes the offence;

(b) every person who does any act or makes any omission for the purpose of enabling or aiding another person to commit the offence;

(c) every person who aids another person in committing the offence; and

(d) any person who counsels or procures any other person to commit the offence.

(2) In the circumstances mentioned in subsection (1) (d) the person may be charged either with committing the offence himself or with counselling or procuring its commission.

(3) A person convicted of counselling or procuring an offence shall be liable to the same consequences in all respects as if he had been convicted of committing the offence.

(4) Any person who procures another person to do any act or make any omission of such a nature that, if he had himself done the act or made the omission, the act or omission would have constituted an offence on his part, is guilty of an offence of the same kind, and is liable to the same punishment, as if he had done the act or made the omission; and he may be charged with doing the act or making the omission.

Offences committed in prosecution of common purpose

28 When two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another, and in the prosecution of such purpose an offence is committed of such a nature that its commission was a probable consequence of the prosecution of such purpose, then each of such persons is deemed to have committed the offence.

Mode of execution immaterial

29 (1) When a person counsels another person to commit an offence, and an offence is actually committed after such counsel by the person to whom it is given, it is immaterial whether the offence actually committed is the same as that counselled or a different one, or whether the offence is committed in a different way, if in either case the facts constituting the offence actually committed are a probable consequence of carrying out the counsel.

(2) In either case the person who gave the counsel is deemed to have counselled the other person to commit the offence actually committed by him.

Accessories after the fact

30 (1) A person who receives, relieves or assists another person who has to his knowledge committed a felony or misdemeanour in order to enable him to escape punishment becomes an accessory after the fact to the felony or misdemeanour.

(2) A married woman does not become an accessory after the fact to a felony or misdemeanour which her husband has committed by receiving, relieving or assisting her

husband in order to enable him to escape punishment; nor by receiving, relieving or assisting, in her husband's presence and by his authority, another person who has committed an offence in the commission of which her husband has taken part, in order to enable that other person to escape punishment.

Attempts and incitements to commit offences

Elements of attempt to commit offence

31 (1) When a person, intending to commit an offence, begins to put his intention into execution by means adapted to its fulfilment, and manifests his intention by some overt act, but does not fulfil his intention to such an extent as to commit the offence, he is said to attempt to commit the offence.

(2) It is immaterial, whether the offender does all that is necessary on his part for completing the commission of the offence, or whether the complete fulfilment of his intention is prevented by circumstances independent of his will, or whether he desists of his own motion from the further prosecution of his intention.

(3) It is immaterial that by reason of circumstances not known to the offender it is impossible in fact to commit the offence.

(4) The same facts may constitute one offence and an attempt to commit another offence.

Attempt to commit offence

32 (1) Any person who attempts to commit any indictable offence is guilty of an indictable offence, which, unless otherwise stated, is a misdemeanour.

(2) When a person who commits an indictable offence is punishable on summary conviction, a person who attempts to commit such an offence may also be summarily convicted.

(3) Any person who attempts to commit an offence which is punishable on summary conviction is guilty of an offence which is punishable on summary conviction.

(4) If, upon the trial of any person for an attempt to commit an offence, it is established that the complete offence was committed, such person shall not by reason thereof be entitled to be acquitted of such attempt, and may be convicted of such attempt, but he shall not be liable to be prosecuted thereafter for the complete offence in respect of the same facts.

Attempt to procure etc commission of offence

33 (1) Any person who solicits, incites, or attempts to procure, another person to do any act or any omission, whether in Bermuda or elsewhere, of such a nature that, if the act were done or the omission were made, an offence would thereby be committed under the laws of Bermuda, or the laws in force in the place where the act or omission is proposed to be done or made, whether by himself or by that other person, is guilty of an offence of the same kind, and is liable to the same punishment, as if he had himself attempted to do the same act or make the same omission in Bermuda.

(2) If the act or omission is proposed to be done or made at a place not in Bermuda, the punishment cannot exceed that which he would have incurred under the laws in force where the act or omission was proposed to be done or made, if he had himself attempted to do the proposed act or make the proposed omission.

(3) In the circumstances mentioned in subsection (2) a prosecution cannot be instituted except at the request of the Government of the State having jurisdiction in the place where the act or omission was proposed to be done or made.

Instructing a person who participates in an unlawful gang to commit an offence

33A (1) Any person who knowingly instructs, directly or indirectly, a person who participates in or actively contributes to unlawful gang activity to commit an offence is guilty of an offence of the same kind, and is liable to the same punishment (including an additional element under section 70JB) as if he himself had committed that offence.

(2) In a prosecution for an offence under subsection (1), it shall not be necessary to prove that—

(a) an offence other than the offence under subsection (1) was actually committed;

(b) the accused person instructed a particular person to commit an offence; or

(c) the accused person knew the identity of all of the persons who constitute the unlawful gang.

(3) Section 70JA (unlawful gang and unlawful gang activity-interpretation) applies for the purposes of this section.

[Section 33A inserted by 2012 : 29 s. 2 effective 20 July 2012 until 31 December 2015; extended until 31 December 2018 by BR 106 / 2015 para. 2 effective 23 December 2015; subject to further extension by notice in Gazette - see 2012 : 29 s. 4; extended until 31 December 2021 by BR 148 / 2018 para. 2 effective 18 December 2018]

PART III

CRIMINAL RESPONSIBILITY

Application of Part III

34 This Part shall apply to all persons charged with any offence against a statutory provision.

Ignorance of law no excuse

35 (1) Ignorance of the law does not afford any excuse for any act or omission which would otherwise constitute an offence, unless knowledge of the law by the offender is expressly declared to be an element of the offence.

(2) Notwithstanding anything in subsection (1) a person is not criminally responsible, as for an offence relating to property, for an act done or omitted to be done

by him with respect to any property in the exercise of an honest claim of right and without intention to defraud.

Accident etc

36 (1) Subject to the express provisions of this Act relating to negligent acts and omissions, a person is not criminally responsible for an act or omission which occurs independently of the exercise of his will, or for an event which occurs by accident.

(2) Unless the intention to cause a particular result is expressly declared to be an element of the offence constituted, in whole or part, by an act or omission, the result intended to be caused by an act or omission is immaterial.

Motive

37 Unless otherwise expressly declared, the motive by which a person is induced to do an act or to make an omission, or to form an intention, is immaterial so far as regards criminal responsibility.

Mistake of fact

38 Without prejudice to any provision of law to the contrary, any person who does any act or makes any omission under an honest and reasonable, but mistaken, belief in the existence of any state of things is not criminally responsible for the act or omission to any greater extent than if the real state of things had been such as he believed to exist.

Extraordinary emergencies

39 Subject to the express provisions of this Act relating to acts done or omissions made upon compulsion or provocation or in self-defence, a person is not criminally responsible for an act or omission done or made under such circumstances of sudden or extraordinary emergency that an ordinary person possessing ordinary powers of self-control could not reasonably be expected to act otherwise.

Presumption of sanity

40 Every person is presumed to be of sound mind, and to have been of sound mind at any time which comes in question, until the contrary is proved.

Insanity

41 (1) A person is not criminally responsible for an act or omission if at the time of doing the act or making the omission he is in such a state of mental disease or natural mental infirmity as to deprive him—

(a) of capacity to understand what he is doing; or

(b) of capacity to control his actions; or

(c) of capacity to know that he ought not to do the act or make the omission.

(2) A person whose mind, at the time of his doing an act or making an omission, is affected by delusions on some specific matter or matters, but who is not otherwise entitled to the benefit of subsection (1), is criminally responsible for the act or omission to

the same extent as if the real state of things had been such as he was induced by the delusions to believe to exist.

Intoxication

42 (1) Section 41 shall apply and have effect in relation to any person whose mind is disordered by intoxication—

(a) where the intoxication is caused by the administration of any intoxicating liquor, drug or other thing whatsoever in circumstances—

(i) where the administration occurred without the consent of the person to whom such liquor, drug or other thing was administered; or

(ii) where the person. to whom such liquor, drug or other thing was administered did not know or had no reason to believe that intoxication could result from such administration; or

(b) where the intoxication results from the due carrying out of a *bona fide* course of medical treatment.

(2) For the purposes of subsection (1) it is immaterial whether the intoxication is caused by the administration of the intoxicating liquor, drugs or other thing whatsoever to the person who so became intoxicated by himself or by any other person.

(3) The onus of proving that anything in subsection (1) applies in relation to any particular person at any particular time shall be upon the person who alleges that the said provision so applies.

Intention in relation to intoxication

43 Where an intention to cause a specific result is an element of an offence, then intoxication of any person charged with that offence shall be taken into account for the purpose of determining whether or not he had such an intention.

Immature age

44 (1) A person under the age of eight years is not criminally responsible for any act or omission.

(2) A person under the age of fourteen years is not criminally responsible for an act or omission, unless it is proved that at the time of doing the act or making the omission he had capacity to know that he ought not to do the act or make the omission.

(3) It shall be conclusively presumed that a male child under the age of fourteen years cannot have carnal knowledge.

Judicial officers

45 Except where otherwise expressly provided by any provision of law, a judicial officer is not criminally responsible for any act done or omission made by him in the exercise of his judicial functions, although the act done is in excess of his judicial authority or although he is required to do the act which he has omitted to do.

Acts done in execution etc of provision of law

46 (1) A person is not criminally responsible for an act or omission where he does the act or makes the omission—

(a) in due execution of any provision of law; or

(b) in due obedience to the order of a competent authority which he is required to obey by or under any provision of law, unless such order is manifestly unlawful.

(2) Whether an order is or is not manifestly unlawful is declared to be a question of law.

Acts done in resistance to violence

47 Without prejudice to any other provision of this Act, a person is not criminally responsible for an act or omission where the act or omission is reasonably necessary for the purpose of resisting actual violence threatened to him or to another person in his presence:

Provided that the foregoing provisions of this section shall not have effect so as to justify or excuse—

(a) *[Deleted by 1999:51]*

(b) an act or omission which constitutes an offence of which causing grievous bodily harm to the person of another, or an intention to cause such grievous bodily harm, is an element.

[Section 47 amended by 1999:51 s.4 & Sch effective 23 December 1999]

Acts done for purpose of self-preservation

48 Without prejudice to any other provision of this Act, a person is not criminally responsible for an act or omission where he does the act or makes the omission for the purpose of saving himself from immediate death or grievous bodily harm threatened to be inflicted upon him by some person actually present and in a position to execute the threats, and believing himself to be unable otherwise to escape the carrying of the threats into execution:

Provided that the foregoing provisions of this section shall not have effect so as to justify or excuse—

(a) *[Deleted by 1999:51]*

(b) in the case of a person threatened with grievous bodily harm, an act or omission which constitutes an offence of which causing grievous bodily harm to the person of another, or an intention to cause such grievous bodily harm, is an element; or

(c) an act done, or an omission made, by a person who has by entering into an unlawful association or conspiracy rendered himself liable to have such threats made to him.

[Section 48 amended by 1999:51 s.4 & Sch effective 23 December 1999]

Compulsion of husband

49 (1) A married woman is not relieved of responsibility for an act or omission solely because the act is done or, as the case may be, the omission is made, in the presence of her husband.

(2) Notwithstanding anything in subsection (1) a married woman is not criminally responsible for an act or omission—

(a) which she is actually compelled by her husband to do or make; and

(b) which is done or made in his presence,

except an act or omission which would constitute murder, in which case the presence of her husband is immaterial.

[Section 49 amended by 1999:51 s.4 & Sch effective 23 December 1999; subsection (2) amended by 2014 : 14 s. 4 effective 19 September 2014]

No conspiracy between husband and wife alone

50 A husband and wife are not criminally responsible for a conspiracy between themselves alone.

Criminal responsibility of husband and wife for acts done by either with respect to the other's property

51 (1) When a husband and wife are living together, neither of them is criminally responsible for doing any act or making any omission with respect to the property of the other—

(a) except in the case of an act or omission of which an intention to injure or defraud some other person is an element; and

(b) except in the case of an act done by either of them when leaving or deserting, or when about to leave or desert, the other.

(2) Subject to subsection (1), a husband and wife are, each of them, criminally responsible for any act or omission made with respect to the property of the other, which would be an offence if they were not husband and wife, and to the same extent as if they were not husband and wife:

Provided that neither of them can institute criminal proceedings against the other with respect to property while they are living together.

(3) In this section "property", used with respect to a wife, means her separate property.

Offences by partners and members of companies with respect to partnership or corporate property.

52 Any person who, being a member of a partnership, corporation or any association recognized as a company by the Companies Act 1981 [*title 17 item 5*] does any act or makes any omission with respect to the property of the partnership, corporation or company which, if he were not a member of the partnership, corporation or company, would constitute an offence, is criminally responsible to the same extent as if he were not such member.

PART IV

PURPOSE AND PRINCIPLES OF SENTENCING

Purpose

53 The fundamental purpose of sentencing is to promote respect for the law and to maintain a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives—

(a) to protect the community;

(b) to reinforce community-held values by denouncing unlawful conduct;

(c) to deter the offender and other persons from committing offences;

(d) to separate offenders from society, where necessary;

(e) to assist in rehabilitating offenders;

(f) to provide reparation for harm done to victims;

(g) to promote a sense of responsibility in offenders by acknowledgement of the harm done to victims and to the community.

[Section 53 repealed and substituted by 2001:29 s.3 effective 29 October 2001]

Fundamental principle

54 A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

[Section 54 repealed and substituted by 2001:29 s.3 effective 29 October 2001]

Imprisonment to be imposed only after consideration of alternatives

55 (1) A court shall apply the principle that a sentence of imprisonment should only be imposed after consideration of all sanctions other than imprisonment that are authorized by law.

(2) In sentencing an offender the court shall have regard to—

(a) the nature and seriousness of the offence, including any physical or emotional harm done to a victim;

(b) the extent to which the offender is to blame for the offence;

(c) any damage, injury or loss caused by the offender;

(d) the need for the community to be protected from the offender;

(e) the prevalence of the offence and the importance of imposing a sentence that will deter others from committing the same or a similar offence;

(f) the presence of any aggravating circumstances relating to the offence or the offender, including—

(i) evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or any other similar factors;

(ii) evidence that the offender, in committing an offence, abused a position of trust or authority in relation to the victim;

(fa) the presence of any aggravating circumstances relating to a serious personal injury offence as defined in section 329D, or an offender where the victim is a child, including—

(i) evidence that the offender seriously wounded, maimed or disfigured another person or endangered the complainant's life;

(ii) evidence that the offender preceded or accompanied the offence with acts of torture or serious violence;

(iii) evidence that the offence was committed against a particularly vulnerable victim;

(iv) evidence that the offence was committed against a member of the family, against a child cohabiting with the offender or while abusing his position of trust;

(v) evidence that there were one of two or more persons jointly committing the offence;

(vi) evidence that the offender was acting within the framework of unlawful gang activity as defined under section 70JA;

(vii) evidence that the offender has previously been convicted of offences of the same nature;

(g) the presence of any mitigating circumstances relating to the offence or the offender including—

(i) an offender's good character, including the absence of a criminal record;

(ii) the youth of the offender;

(iii) a diminished responsibility of the offender that may be associated with age or mental or intellectual capacity;

(iv) a plea of guilty and, in particular, the time at which the offender pleaded guilty or informed the police, the prosecutor or the court of his intention so to plead;

(v) any assistance the offender gave to the police in the investigation of the offence or other offences;

(vi) an undertaking given by the offender to co-operate with any public authority in a proceeding about an offence, including a confiscation proceeding;

(vii) a voluntary apology or reparation provided to a victim by the offender.

[Section 55 deleted by 1999:51 s.4 & Sch effective 23 December 1999, and repealed and substituted by 2001:29 s.3 effective 29 October 2001; Section 55 subsection (2)(fa) inserted by 2019 : 36 s. 3 effective 1 November 2019]

PUNISHMENT - GENERAL PROVISIONS

Construction of statutory provisions relating to punishments

56 Except where otherwise expressly provided, in the construction of this Act or any other enactment—

(a) a person liable to imprisonment for any term may be sentenced to imprisonment for any shorter term;

(b) a person liable to a fine of any amount may be sentenced to pay a fine of any lesser amount;

(c) a person liable to imprisonment may in addition to, or instead of, imprisonment be sentenced to pay—

(i) a fine of $1500 where the term of imprisonment does not exceed 12 months,

(ii) a fine of $3000 where the term of imprisonment exceeds 12 months but does not exceed 2 years,

(iii) a fine of $7,500 where the term of imprisonment exceeds 2 years.

[Section 56 repealed and substituted by 2001:29 s.3 effective 29 October 2001]

Determination of sentence

57 (1) Where an enactment prescribes a punishment in respect of an offence, the sentence to be imposed is, subject to the limitations provided in the enactment, in the discretion of the court that convicts a person who commits the offence.

(2) Where an accused is convicted of an offence punishable with both fine and imprisonment and a term of imprisonment in default of payment of the fine is not specified in the enactment that prescribed the punishment to be imposed, the imprisonment that may be imposed in default of payment shall not exceed the term of the imprisonment that is prescribed in respect of the offence.

(3) Where an accused—

(a) is sentenced while serving a term of imprisonment for a prior offence, and a term of imprisonment, whether in default of payment of a fine or otherwise, is imposed;

(b) is convicted of an offence punishable with both a fine and imprisonment and both are imposed; or

(c) is convicted of more offences than one, and—

(i) more than one fine is imposed,

(ii) terms of imprisonment for the respective offences are imposed, or

(iii) a term of imprisonment is imposed in respect of one offence and a fine is imposed in respect of another offence,

the court that sentences the accused may direct that the terms of imprisonment that are imposed, whether in default of payment of a fine or otherwise, be served consecutively.

[Section 57 repealed and substituted by 2001:29 s.3 effective 29 October 2001]

Time in custody to be taken into account

58 In determining the sentence to be imposed on a person convicted of an offence, a court may take into account any time spent in custody by the person as a result of the offence.

[Section 58 repealed and substituted by 2001:29 s.3 effective 29 October 2001]

Time at large to be excluded from term of imprisonment

59 Any time during which a convicted person is unlawfully at large or is at large on release on licence does not count as part of any term of imprisonment imposed on the person.

[Section 59 deleted by 1999:51 effective 23 December 1999, and repealed and substituted by 2001:29 s.3 effective 29 October 2001]

Commencement of sentence

60 (1) Subject to subsections (2) and (3), a sentence commences when it is imposed, except where an enactment otherwise provides.

(2) A term of imprisonment, whether imposed by a trial court or the court appealed to, commences or shall be deemed to be resumed, as the case may be, on the day on which the convicted person is arrested and taken into custody under the sentence.

(3) Where a sentence that is imposed is a fine with a term of imprisonment in default of payment, no time prior to the day of the execution of the warrant of committal counts as part of the term of imprisonment.

[Section 60 deleted by 1999:51 effective 23 December 1999, and repealed and substituted by 2001:29 s.3 effective 29 October 2001]

PROCEDURE AND EVIDENCE

Sentencing proceedings

61 A court shall, as soon as practicable after an offender has been found guilty, conduct proceedings to determine the appropriate sentence to be imposed.

[Section 61 repealed and substituted by 2001:29 s.3 effective 29 October 2001]

Presentence report by probation officer

62 (1) Where an accused, other than a corporation, pleads guilty to or is found guilty of an offence, a probation officer, if required to do so by a court, shall, as soon as practicable, prepare and file with the court a report in writing relating to the accused for the purpose of assisting the court in imposing a sentence or in determining whether the accused should be discharged pursuant to section 69.

(2) Upon the report being filed with the court the clerk or registrar of the court shall give a copy of the report to the accused or his counsel.

(3) Unless otherwise specified by the court, the report shall, wherever possible, contain information on the following matters—

(a) the offender's age, maturity, character, home circumstances, employment history, behaviour, attitude and willingness to make amends;

(b) the history of previous dispositions under the Young Offenders Act 1950, this Act and any other Act;

(c) the history of any measures other than imprisonment used to deal with the offender, and the offender's response to those measures; and

(d) an analysis of the likelihood of the offender to reoffend.

(4) The presentence report shall also contain information on any other matter required by the court, after hearing argument from the prosecutor and the offender, to be included in the report.

(5) Where the court orders a presentence report and the court is considering a probation order which will contain a requirement that the offender submit to treatment for alcohol or drug addiction, the court may order that the offender undergo an assessment by a qualified person for such treatment, which assessment shall form part of the presentence report.

(6) Where—

(a) a request has been made by the prosecution or the offender for a presentence report; and

(b) the court rejects the request,

the court shall give reasons for the rejection of the request.

[Section 62 repealed and substituted by 2001:29 s.3 effective 29 October 2001]

Victim impact statement

63 (1) For the purpose of determining the sentence to be imposed on an offender or whether the offender should be discharged pursuant to section 69 in respect of any offence, the court shall consider any statement made by the victim or by the prosecution on behalf of the victim describing the harm done to, or loss suffered by, the victim arising from the commission of the offence.

(2) A victim impact statement shall be in written form and shall be filed with the court.

(3) At the request of a victim, the court may instruct the clerk of the court or registrar to read the statement into the record in open court.

(4) Where the victim impact statement discloses confidential or sensitive information or material that may cause embarrassment or distress to the victim or his family, the court may direct that the statement be dealt with *in camera*.

(5) The prosecutor shall notify the victim as soon as a date has been set for sentencing as to the date fixed for sentencing and the right of the victim to make a victim impact statement.

(6) The clerk or registrar of the court shall provide a copy of the victim impact statement, as soon as possible after a finding of guilt, to the offender or counsel for the offender and the prosecutor.

(7) As soon as practicable after a finding of guilt and in any event before sentence, the court shall inquire of the prosecutor or a victim of the offence whether the victim has been advised of the opportunity to make a victim impact statement.

(8) For the purposes of this section, "victim", in relation to an offence—

(a) means the person to whom harm is done or who suffers physical or emotional loss as a result of the commission of the offence; and

(b) where the person described in paragraph (a) is dead, ill or otherwise incapable of making a statement referred to in subsection (1), includes the spouse or any relative of that person, anyone who has in law or fact the custody of that person or is responsible for the care or support of that person or any dependant of that person.

[Section 63 amended by 1999:51 s.4 & Sch effective 23 December 1999, and repealed and substituted by 2001:29 s.3 effective 29 October 2001]

Evidence relevant to determination of sentence

64 (1) In determining the sentence, the court shall consider any relevant information placed before it, including any representations or submissions made by or on behalf of the prosecutor or the offender.

(2) Before determining the sentence the court shall give the prosecutor and the offender an opportunity to make submissions relevant to the sentence to be imposed.

(3) In determining the sentence, a court may consider any evidence disclosed at the trial.

(4) The court may, on its own motion, after hearing argument from the prosecutor and the offender require the production of evidence that would assist it in determining the appropriate sentence.

(5) Hearsay evidence is admissible at sentencing proceedings, but the court may, if the court considers it to be in the interests of justice, compel a person to testify where the person—

(a) has personal knowledge of the matter;

(b) is reasonably available; and

(c) is a compellable witness.

(6) Where the court is composed of a judge and jury, the court shall accept as proved all facts, express or implied, that are essential to the jury's verdict of guilty.

(7) Where there is a dispute with respect to any fact that is relevant to the determination of a sentence—

(a) the court shall request that evidence be adduced as to the existence of the fact unless the court is satisfied that sufficient evidence was adduced at the trial;

(b) the party wishing to rely on a relevant fact, including a fact contained in a presentence report, has the burden of proving it;

(c) either party may cross-examine any witness called by the other party;

(d) subject to paragraph (e), the court must be satisfied on a balance of probabilities of the disputed fact before relying on it in determining the sentence; and

(e) the prosecutor must establish, by proof beyond a reasonable doubt, the existence of any aggravating fact or any previous conviction by the offender.

[Section 64 repealed and substituted by 2001:29 s.3 effective 29 October 2001]

Other offences taken into consideration

65 (1) In determining the sentence, the court—

(a) shall consider, if it is possible and appropriate to do so, any other offences of which the offender was found guilty by the same court, and shall determine the sentence to be imposed for each of those offences;

(b) shall consider, if the Director of Public Prosecutions and the offender consent, any outstanding charges that the court has jurisdiction to try against the offender to which the offender consents to plead guilty and pleads guilty, and shall determine the sentence to be imposed for each charge unless the court is of the opinion that a separate prosecution for any of the outstanding charges is necessary in the public interest; and

(c) may consider any facts forming part of the circumstances of the offence that could constitute the basis for a separate charge.

(2) The court shall, on the information or indictment, note—

(a) any outstanding charges considered in determining the sentence under paragraph (1)(b); and

(b) any facts considered under paragraph (1)(c) in determining the sentence under that paragraph,

and no further proceedings may be taken with respect to any offence described in those charges or disclosed by those facts unless the conviction for the offence of which the offender has been found guilty is set aside or quashed on appeal.

[Section 65 amended by 1999:51 s.4 & Sch effective 23 December 1999, and repealed and substituted by 2001:29 s.3 effective 29 October 2001]

Offender may speak to sentence

66 Before determining the sentence to be imposed, the court shall ask whether the offender, if present, has anything to say.

[Section 66 repealed and substituted by 2001:29 s.3 effective 29 October 2001]

Reasons for sentence

67 When imposing a sentence, a court shall state the terms of the sentence imposed and the reasons for it, and enter those terms and reasons into the record of the proceedings.

[Section 67 repealed and substituted by 2001:29 s.3 effective 29 October 2001]

DRUG TREATMENT PROGRAMMES

Drug treatment programmes

68 (1) There is established a special magistrates court to be known as the Drug Treatment Court.

(2) The Chief Justice may designate any magistrate as a judge of the Drug Treatment Court.

(3) Where an accused other than a corporation—

(a) pleads guilty to or is found guilty of an offence;

(b) appears to the court to satisfy the eligibility criteria; and

(c) is willing to undergo an assessment by a qualified person to determine his suitability for a drug treatment programme,

the court may by order direct the offender to appear before the Drug Treatment Court.

(4) The Drug Treatment Court on being satisfied—

(a) that the offender is suitable for enrollment in a drug treatment programme;

(b) that it is in the best interests of the offender that he be enrolled in such programme; and

(c) that the offender agrees to be enrolled in such programme,

may, instead of convicting the offender, order that he be enrolled in a drug treatment programme of such description, for such period and subject to such conditions as the Drug Treatment Court may specify in the order.

(5) Where an offender has been enrolled in a drug treatment programme, the Drug Treatment Court shall monitor the progress of the offender throughout the duration of the programme.

(6) Where the offender fails, without reasonable excuse, to comply with the rules of a drug treatment programme or any conditions set out in an order under subsection (4), the Drug Treatment Court may—

(a) (i) impose any sanction, including, imprisonment for a period not exceeding 20 days, that it could have imposed for the offence in respect of which the order was made; and

(ii) require the offender to continue in the drug treatment programme; or

(b) (i) revoke the order,

(ii) convict the offender of the offence in respect of which the order was made, and

(iii) impose any sentence that could have been imposed if the offender had been convicted at the time the order was made.

(7) For the avoidance of doubt it is declared that where an accused—

(a) has pleaded guilty to an offence; and

(b) has been enrolled in a drug treatment programme,

the plea is irrevocable.

(8) For the purposes of the Rehabilitation of Offenders Act 1977 a person shall be deemed to have become a rehabilitated person if he successfully completes a drug treatment programme pursuant to an order under subsection (4).

(9) In this section—

(a) "drug treatment programme" means a drug treatment and rehabilitative programme approved by the Minister responsible for drug prevention;

(b) "eligibility criteria" means eligibility criteria for participation in a drug treatment programme that are approved by the Minister responsible for drug prevention and are published in the Gazette;

(c) "qualified person" means a person approved by the Minister responsible for drug prevention as qualified to conduct an assessment under this section.

[Section 68 repealed and substituted by 2001:29 s.3 effective 29 October 2001; s.68(9) amended by BR 11/2009 reg. 2 effective 6 February 2009 ; BR74/2001 effective 9 November 2001 approves persons qualified to conduct an assessment for the puposes of this section. ; BR75/2001 effective 9 November 2001 approves drug treatment programmes for the puposes of this section. ; BR76/2001 sets out eligibility criteria for drug treatment programmes for the puposes of this section; subsection (9) paragraphs (a), (b) and (c) amended by BR 5/2011 para.5 effective 25 February 2011]

MENTAL HEALTH TREATMENT PROGRAMME

Mental Health Treatment Programme

68A (1) There is established a programme to be known as the Mental Health Treatment Programme.

(2) The Chief Justice may designate any Judge or magistrate to administer the Programme.

(3) Where a person is accused of an offence and the court is satisfied, on the written or oral evidence of a responsible medical officer, that the person is suffering from a mental disorder or has a mental impairment and—

(a) the person, having attained the age of eighteen years, has pleaded guilty to or been found guilty of the offence;

(b) it appears to the court that the person may be suitable for participation in the Programme; and

(c) the person agrees to undergo an assessment to determine whether he is suitable for participation in the Programme,

the court may by order direct that the offender undergo an assessment to determine whether he is suitable for participation in the Programme.

(4) Where, after an assessment, it is determined that—

(a) the offender is suitable for participation in the Programme;

(b) the offender agrees to be enrolled in the Programme;

(c) the offender is able to be maintained in the community;

(d) it is in the best interests of the offender that he be enrolled in the Programme; and

(e) it is not contrary to the public interest that the offender be enrolled in the Programme,

the court may, instead of convicting the offender, by order direct that he be enrolled in the Programme for such period and subject to such conditions as may be specified in the order, but no order shall continue in force for more than five years after the date on which the order came into force.

(5) Where a person is—

(a) discharged under section 544 from the charge of which he was acquitted or with respect to which another verdict was given showing that he is not liable to punishment;

(b) found to be insane and is discharged from a charge of an indictable offence under section 545 for want of prosecution; or

(c) acquitted of a charge of an indictable offence under section 546 on account that the person was found to be insane at the time when the act or omission which constitutes the alleged offence took place,

then notwithstanding that the court would otherwise be required to deal with the person in accordance with those sections, the court may instead by order direct that the person be enrolled in the Programme under subsection (4), provided the person has attained the age of eighteen years and the requirements of subsection (3)(b) and (c) and subsection (4)(a) to (e) are met.

(6) Where the court makes an order under this subsection directing that an offender be enrolled in the Programme as a condition of a probation order under section 70, the offender must have—

(a) attained the age of eighteen years; and

(b) met the requirements of subsection (3)(b) and (c) and subsection (4)(a) to (e),

and the order may be made for such period and subject to such conditions as may be specified in the order, but no such order shall continue in force after the day on which the probation order expires.

(7) Where the court makes an order under this subsection directing that an offender be enrolled in the Programme as a condition of a supervision order under section 329E(4)(d), the offender must have—

(a) attained the age of eighteen years; and

(b) met the requirements of subsection (3)(b) and (c) and subsection (4)(a) to (e),

and the order may be made for such period and subject to such conditions as may be specified in the order, but no such order shall continue in force after the date on which the supervision order expires.

(8) In this section and section 68B—

"court" means a court of summary jurisdiction or the Supreme Court;

"mental disorder" and "mental impairment" have the meanings given in section 1(1) of the Mental Health Act 1968;

"order" means a mental health treatment programme order;

"Programme" means the Mental Health Treatment Programme;

"responsible medical officer" has the meaning given in section 1(1) of the Mental Health Act 1968.

[Section 68A inserted by 2016 : 30 s. 3 effective 15 August 2016]

Additional provisions applying to the Mental Health Treatment Programme

68B (1) Subject to subsections (2), (3) and (4)—

(a) subsection (5), (6), and (7) of section 68 apply, with the necessary modifications, in the case of an offender enrolled in the Programme as they apply to an offender enrolled in the drug treatment programme;

(b) sections 70A, 70B, 70C, 70CA, 70E, 70D and 70H apply, with the necessary modifications, in the case of an offender enrolled in the Programme as they apply to an offender discharged on a probation order;

(c) sections 71A and 71B apply, with the necessary modifications, in the case of an offender enrolled in the Programme as they apply to an offender who is subject to a community service order.

(2) The section referred to in subsection (1)(a) is further modified as follows—

(a) in subsection (6), delete "a drug treatment programme or any conditions set out in an order under subsection (4), the Drug Treatment Court may" and substitute "the Mental Health Treatment Programme or any conditions set out in an order under section 68A, the court may";

(b) in subsection (7)(b), delete "a drug treatment programme" and substitute "the Mental Health Treatment Programme under section 68A(4)".

(3) The sections referred to in subsection (1)(b) are further modified as follows—

(a) in section 70B—

(i) in paragraph (a), delete "up to 1000 hours" and substitute "not less than 40 and not more than 1000 hours";

(ii) in paragraph (d), delete "offender and" and substitute "offender, and after consulting with"; and delete "drug prevention" and substitute "public safety or health, as the case may be,";

(iii) insert after paragraph (ha) a new paragraph (hb) reading "comply with any sanctions, including paying a penalty, for failing to comply, without reasonable excuse, with the rules of the Mental Health Treatment Programme or any condition set out in an order;";

(iv) insert after the new paragraph (hb) a new paragraph (hc) reading "receive a reward for complying with the rules of the Mental Health Treatment Programme or any condition set out in an order;";

(b) in section 70C—

(i) in subsection (1)(c), delete "on probation under section 69" and substitute "enrolled in the Mental Health Treatment Programme";

(ii) delete all the words in subsection (2) and substitute "A mental health treatment programme order comes into force when the order is made except that where the offender at that time is serving time in prison or has been admitted to a hospital, it shall come into force when the offender is released from prison or discharged from the hospital.";

(iii) delete all the words in subsection (3) and substitute "If a person who is bound by a mental health treatment programme order is subsequently convicted of an offence or is imprisoned or has been admitted to a hospital, the order continues in force except in so far as the imprisonment or hospitalization renders it impossible for the offender to comply with the order.";

(iv) delete subsection (4);

(v) delete subsection (10);

(c) in section 70CA—

(i) in subsection (1) and throughout the section, delete "probation period" and substitute "enrolment period"; and delete "probationer" and substitute "offender";

(ii) in subsection (2)(a)(ii), delete "three" and substitute "five"; and after "force" insert ", where the order is made under section 68A(4);

(iii) insert after subsection (2)(a)(ii) a new subparagraph (iia) reading "where the order is made under section 68A(6) or (7), extend the period of the order but so that the period of the order as extended shall not go beyond the date on which the probation order or supervision order expires;";

(iv) in subsection (2)(a)(iii), delete "where the order was made under section 70(1)(b),";

(v) in subsection (3)(b)(ii), delete "three" and substitute "five"; and after "force" insert ", where the order is made under section 68A(4)";

(vi) insert after subsection (3)(b)(ii) a new subparagraph (iia) reading "where the order is made under section 68A(6) or (7), extend the

period of the order but so that the period of the order as extended shall not go beyond the date on which the probation order or supervision order expires;";

(vii) in subsection (3)(b)(iii), delete "where the order was made under section 70(1)(b),";

(d) in section 70E, insert after subsection (3) a new subsection (3A) reading "The Director shall assist the court in the administration of the Drug Treatment Programme and the Mental Health Treatment Programme, and in particular shall co-ordinate any treatment or rehabilitative programme in which participation is required of persons enrolled in those Programmes."

(e) in section 70H—

(i) in subsection (2)(a), delete "probation order; or" and substitute "mental health treatment programme order;";

(ii) delete subsection (2)(b).

(4) Section 71A, referred to in subsection (1)(c), is further modified by deleting subsection (1).

[Section 68B inserted by 2016 : 30 s. 3 effective 15 August 2016]

DISCHARGE

Conditional and absolute discharge

69 (1) Where an accused, other than a corporation, pleads guilty to or is found guilty of an offence, the court may, if it considers it to be in the best interests of the offender and not contrary to the public interest, instead of convicting the offender, by order direct that the offender be discharged absolutely or on conditions prescribed in a probation order made under section 70A or 70B.

(2) Where a court directs under subsection (1) that an offender be discharged of an offence, the offender shall be deemed not to have been convicted of the offence except that—

(a) the offender may appeal from the determination of guilt as if it were a conviction in respect of the offence;

(b) the Director of Public Prosecutions or the informant may appeal from the decision of the court not to convict the offender of the offence as if that decision were a judgment or verdict of acquittal of the offence or a dismissal of the information against the offender; and

(c) the offender may plead *autrefois convict* in respect of any subsequent charge relating to the offence.

(3) Where an offender who is bound by the conditions of a probation order made at a time when the offender was directed to be discharged under this section is convicted

of an offence, the court that made the probation order may, in addition to or in lieu of exercising its authority under section 70CA, at any time when it may take action under that section—

(a) revoke the discharge;

(b) convict the offender of the offence to which the discharge relates; and

(c) impose any sentence that could have been imposed if the offender had been convicted at the time of discharge,

and no appeal lies from a conviction under this subsection where an appeal was taken from the order directing that the offender is discharged.

[Section 69 repealed and substituted by 2001:29 s.3 effective 29 October 2001; subsection (3) amended by 2005:13 s.3 effective 15 June 2005]

PROBATION

Making of probation order

70 (1) Where a person is convicted of an offence, a court may, having regard to the age and character of the offender, the nature of the offence and the circumstances surrounding its commission—

(a) direct that the offender be released on conditions prescribed in a probation order; or

(b) in addition to fining or sentencing the offender to imprisonment for a term not exceeding five years, direct that the offender comply with conditions prescribed in a probation order,

and the court may prescribe, as a condition of a probation order, that the offender be enrolled in the Mental Health Treatment Programme under section 68A(6).

(2) A court may also make a probation order where it discharges an accused under section 69.

[Section 70 repealed and substituted by 2001:29 s.3 effective 29 October 2001; subsection (1) amended by 2005:13 s.4 effective 15 June 2005; subsection (1)(b) amended by 2016 : 30 s. 4 effective 15 August 2016]

Compulsory conditions

70A The court shall direct, as conditions of a probation order, that the offender—

(a) not commit another offence during the period of the order;

(b) appear before the court when required to do so by the court;

(c) notify the probation officer in writing in advance of any intended change of address and promptly notify the probation officer of any change of employment or occupation;

(d) report to a probation officer at the place and within the times stated in the order and thereafter when required by the probation officer and in the manner directed by the probation officer; and

(e) not leave Bermuda without the written permission of a probation officer.

[Section 70A inserted by 2001:29 s.3 effective 29 October 2001]

Optional conditions of probation order

70B The court may direct, as additional conditions of a probation order, that the offender—

(a) perform up to 1000 hours of community service over a period not exceeding 18 months;

(b) submit to drug testing as directed by the court;

(c) abstain from—

(i) the consumption of alcohol or other intoxicating substance,

(ii) the consumption of controlled drugs within the meaning of the Misuse of Drugs Act 1972 except in accordance with a medical prescription;

(d) with the agreement of the offender and the director of the relevant programme, participate in a treatment or rehabilitative programme approved by the Minister responsible for drug prevention and comply with the rules of the programme;

(e) complete to the satisfaction of the probation officer any specified course of education or training designed to improve work skills or social skills, or both;

(f) make restitution of property or make reparation in accordance with sections 70H and 70I;

(g) refrain from—

(i) participating in specified activities or attending specified places,

(ii) associating with specified persons or with persons of a specified description;

(h) abide by conditions of any curfew;

(ha) wears electronic monitoring equipment that will enable his movements and locations to be monitored;

(i) comply with such other reasonable conditions as the court may direct for facilitating the successful reintegration of the offender into the community.

[Section 70B inserted by 2001:29 s.3 effective 29 October 2001; amended by BR 11/2009 reg. 2 effective 6 February 2009; paragraph (d) amended by BR 5/2011 para.5 effective 25 February 2011; Section 70B(ha) inserted by 2011 : 50 s. 6 effective 21 December 2011]

Probation order

70C (1) A court that makes a probation order shall—

(a) take reasonable steps to ensure the offender understands the order;

(b) explain the procedure for applying under subsection (5) for a change to the optional conditions;

(c) explain the consequences of being convicted of an offence while on probation under section 69;

(d) explain the consequences of non-compliance with the order;

(e) require the offender to sign the probation order; and

(f) cause a copy of the order to be given to the offender.

(2) A probation order comes into force when the order is made except that where the offender at that time is sentenced to imprisonment under section 70(1)(b) or is serving time in prison, it shall come into force when the offender is released from prison.

(3) If a person who is bound by a probation order is subsequently convicted of an offence or is imprisoned under section 70(1)(b), the order continues in force except in so far as the imprisonment renders it impossible for the offender to comply with the order.

(4) A probation order continues in force for such period as the court may specify in it but no probation order shall continue in force for more than three years after the date on which the order came into force.

(5) A court that makes a probation order may at any time, on application by the offender, the probation officer or the prosecutor, require the offender to appear before it and, after hearing the offender and one or both of the probation officer and the prosecutor—

(a) make any changes to the optional conditions that in the opinion of the court are rendered desirable by a change in the circumstances since those conditions were imposed under section 70B;

(b) relieve the offender, either absolutely or on such terms or for such period as the court thinks desirable of compliance with any optional condition; or

(c) decrease the period for which the probation order is to remain in force,

and the court shall thereupon endorse the probation order accordingly and inform the offender of its action and require the offender to sign the probation order as amended and cause a copy of the order to be given to the offender.

(6) Where a court that makes a probation order imposes a condition that the offender be treated for drug or alcohol addiction and report to a magistrate who is designated to monitor such order, the powers set out in subsection (5) may be exercised by that magistrate.

(7) All the functions of the court under subsection (5) may be exercised in chambers.

(8) *[repealed]*

(9) *[repealed]*

(10) Nothing in this section or sections 70, 70A or 70B affects a probation order or an order for conditional or absolute discharge made in respect of a person under the age of 16 years under the Young Offenders Act 1950.

[Section 70C inserted by 2001:29 s.3 effective 29 October 2001; subsection (1) amended, and (8) and (9) repealed, by 2005:13 s.5 effective 15 June 2005]

Breach of requirement of probation order

70CA (1) Where a probation order has been made by a court and at any time during the probation period it appears on information to a magistrate that the probationer is in breach of any of the conditions of the order, the magistrate may issue a summons requiring the probationer to appear before the Magistrates Court at a date and time specified therein or may, if the information is in writing and on oath, issue a warrant for his arrest.

(2) If it is proved to the satisfaction of the Magistrates Court before which a probationer appears or is brought under this section that the probationer is in breach of any of the conditions of the probation order, then—

(a) if the probation order was made by the Magistrates Court, the court may, without prejudice to the continuance of the probation order, impose on him a fine of $500, or may—

(i) amend the order by cancelling any of the optional conditions of the order or by inserting therein (either in addition to or in substitution for any such condition) any condition which the court could impose under section 70B;

(ii) extend the period of the order but so that the period of the order as extended shall not exceed three years from the date when the order first came into force;

(iii) discharge the order and deal with him for the offence in respect of which the probation order was made, in any way in which the court could deal with him if the court had just convicted him of that offence; and where the order was made under section 70(1)(b), the

court in so dealing with the probationer, shall take into account any period of imprisonment that he has served;

(b) if the probation order was made by the Supreme Court, the court shall remand him in custody or release him on bail (with or without sureties) until he can be brought or appear before the Supreme Court.

(3) Where the court deals with the case as provided in subsection (2)(b) then—

(a) the court shall send to the Supreme Court a certificate signed by the magistrate, certifying that the probationer is in breach of such of the conditions of the probation order as may be specified in the certificate, together with such other particulars of the case as may be desirable; and a certificate purporting to be so signed shall be admissible as evidence of the failure before the Supreme Court; and

(b) where the probationer is brought or appears before the Supreme Court, and it is proved to the satisfaction of that court that he is in breach of any of the conditions of the probation order, that court may, without prejudice to the continuance of the probation order, impose on him a fine of $ 1000, or may—

(i) amend the order by cancelling any of the optional conditions of the order or by inserting therein (either in addition to or in substitution for any such condition) any condition which the court could impose under section 70B;

(ii) extend the period of the order but so that the period of the order as extended shall not exceed three years from the date when the order first came into force;

(iii) discharge the order and deal with him for the offence in respect of which the probation order was made, in any way in which the court could deal with him if the court had just convicted him of that offence; and where the order was made under section 70(1)(b), the court, in so dealing with the probationer, shall take into account any period of imprisonment that he has served.

(4) A fine imposed under this section in respect of a failure to comply with the conditions of a probation order shall be deemed for the purposes of any enactment to be a sum adjudged to be paid on a conviction.

(5) If it appears to a judge or magistrate that the person in respect of whom a probation order has been made has, as a result of criminal proceedings instituted later than twelve months after the expiration of the probation period, been convicted of an offence committed during the probation period and has been dealt with in respect of that offence, the judge or magistrate, as the case may be, shall take no further proceedings for such breach.

[Section 70CA inserted by 2005:13 s.6 effective 15 June 2005]

Presentence report

70D (1) Before imposing a condition under section 70B(a), (d) or (e) the court must have before it a presentence report prepared by a probation officer, which has addressed the following—

(a) the offender's circumstances;

(b) the feasibility of securing compliance with the relevant condition;

(c) where participation in any programme or activities would involve the co-operation of a person other than the offender and the probation officer who is responsible for his supervision, that person's written consent to the inclusion of the offender in the programme or activities;

(2) Where the court orders a presentence report and the court is considering the making of a probation order containing a condition that the offender participate in a treatment or rehabilitation programme for alcohol or drug abuse, the court may order at the time when a presentence report is requested that the offender undergo an assessment by a qualified person of the suitability of the offender for such programme.

[Section 70D inserted by 2001:29 s.3 effective 29 October 2001]

Appointment, functions etc of probation officers

70E (1) The Governor may appoint such number of probation officers as may appear to him to be necessary.

(2) A probation officer shall have the powers and discharge the duties conferred or imposed on a probation officer under this Act or any other enactment and, in particular, it shall be the duty of a probation officer—

(a) to supervise, having regard to the requirements of the probation orders made in their respective cases, the offenders placed under his supervision;

(b) to advise and assist them;

(c) to inquire, without prejudice to any special directions that may be given by the court, into the circumstances and past and present environment of any accused or convicted person, with the view to assisting the court in determining the most suitable way of dealing with his case;

(d) to assist the court by which a probation order was made in determining how best to exercise its powers in relation to the offender; and

(e) to advise and assist offenders who, on release from custody, have been placed under his supervision.

(3) It shall be the duty of the Director, subject to any general or special directions given to him by the responsible Minister, to provide for the efficient carrying out of the work of probation officers and to review the work of probation officers in individual cases.

(4) The probation officer who is to be responsible for the supervision of an offender shall be selected under arrangements made by the Director from among the

available probation officers; and, if the probation officer so selected dies or is unable for any reason to carry out his or her duties, or if the Director thinks it desirable that another probation officer should take his or her place, then another probation officer shall be selected in like manner from among the available probation officers.

(5) In this section "the Director" means the public officer responsible for probation services.

[Section 70E inserted by 2001:29 s.3 effective 29 October 2001]

FINES

Fines

70F (1) Subject to subsection (2), a court that convicts a person, other than a corporation, of an offence may fine the offender in addition to or in lieu of any other sanction that the court is authorized to impose.

(2) In fixing the amount of any fine to be imposed on an offender, the court shall take into consideration the means and responsibilities of the offender so far as they appear or are known to the court.

(3) Where the court is of the opinion that the offender is unable to pay a fine, it shall determine whether the offender would be a suitable candidate to perform community service as a condition of a probation order.

(4) All or any part of a fine imposed under this section may be taken out of moneys found in the possession of the offender at the time of the arrest of the offender if the court making the order, on being satisfied that ownership of or right to possession of those moneys is not disputed by claimants other than the offender, so directs.

(5) A court that fines an offender under subsection (1) may order that the fine be paid by instalments at stipulated times or may allow the offender time to pay the fine and, on the application of the offender, may extend the time for payment of the fine.

(6) In the absence of an order under subsection (5) the fine shall be due and payable on the twenty-eighth day after the order was made.

(7) The court may secure the payment of the fine by imposing such terms as the court thinks appropriate.

(8) If the fine is not paid within the time by which the fine or any portion thereof fails to be paid under this section the fine may be enforced—

(a) in the case of a fine imposed by the Supreme Court, as a civil debt owed to the Crown; or

(b) in the case of a fine imposed by a court of summary jurisdiction, as a civil debt owed to the Crown or pursuant to section 60 of the Criminal Jurisdiction and Procedure Act 2015,

and in either case the court may provide for payment of the fine by garnishment or attachment of the offender's wages.

[Section 70F inserted by 2001:29 s.3 effective 29 October 2001; subsection (8)(b) amended by 2015 : 38 s. 89 effective 6 November 2015]

Fines on corporations

70G (1) A corporation that is convicted of an offence is liable, in lieu of any imprisonment that is prescribed as punishment for that offence, to be fined in an amount, except where otherwise provided by law—

(a) that is in the discretion of the court, where the offence is an indictable offence; or

(b) not exceeding $20,000, where the offence is a summary offence.

[Section 70G inserted by 2001:29 s.3 effective 29 October 2001]

RESTITUTION, REPARATION AND DEPRIVATION

Restitution

70H (1) Where an offender—

(a) deprives a person of property of which that person was in possession; and

(b) is in possession of the property,

the court may order the offender to restore the property to the person who was in possession of it immediately before the commission of the offence.

(2) The court may enforce an order for restitution by—

(a) imposing it as a condition in a probation order; or

(b) by suspending the passing of sentence to allow the property to be restored before sentencing.

[Section 70H inserted by 2001:29 s.3 effective 29 October 2001]

Reparation

70I (1) Where an offender is convicted or discharged, the court imposing sentence on or discharging the offender may, in the case of damage to or the loss or destruction of property of any person as a result of the commission of an offence or the arrest or attempted arrest of the offender, make a reparation order requiring the offender to pay that person an amount not exceeding the replacement value of the property at the date the order is imposed less the value of any part of the property that is returned to that person at the date it is returned.

(2) Where bodily harm is caused to any person as a result of the commission of an offence or the arrest or attempted arrest of the offender, the court may make a

reparation order requiring the offender, to pay to that person out of pocket expenses directly incurred as a result of the bodily harm.

(3) Where the amount of reparation under subsection (1) or (2) is not readily ascertainable, the court may adjourn the proceedings and order a probation officer or any other person designated by the court for the purpose to prepare a report to determine—

(a) the loss or damage;

(b) the means of the offender;

(c) the nature and extent of the offender's existing financial obligations;

(d) the maximum amount the offender is likely to be able to pay under a sentence to make reparation; and

(e) where payment by instalments is considered appropriate, the frequency and magnitude of any payments that would be required to make reparation.

(4) The court may make an order attaching any salary, wages or other monies that may become due and payable to the offender.

(5) An order for reparation under subsection (1) or (2) may be enforced as a condition of probation.

(6) Where the court decides not to include a reparation order as a condition of probation, the person who suffered the loss or damage or bodily injury ("victim"), after the time has expired under the reparation order for the offender to pay, may apply to the court for enforcement of the reparation order.

(7) On receipt of an application under subsection (6) the court shall cause a summons to be issued for the appearance of the offender and the victim shall be notified of the hearing date.

(8) Upon the appearance of the offender the court shall enquire into—

(a) the reasons why the reparation order was not complied with; and

(b) the offender's present ability to pay the balance of the reparation order.

(9) The court may impose such new terms for the payment of the reparation as it considers necessary to secure payment of the balance owing under the reparation order.

(10) Where—

(a) the court—

(i) finds it appropriate in the circumstances to make an order for reparation in relation to an offender,

(ii) is also considering an order to require the offender to pay a fine; and

(b) it appears to the court that the offender would not have the means or ability to comply with both an order for reparation and an order to pay the fine,

the court shall first make the order of reparation and shall then consider whether and to what extent an order to pay a fine is appropriate in the circumstances.

(11) Where both reparation and a fine are ordered, payments will be applied first to reparation and secondly towards the fine.

(12) All or any part of any amount that is ordered to be paid by way of reparation under subsection (1) or (2) may be taken out of monies found in the possession of the offender at the time of his arrest if the court is satisfied that ownership of or right to possession of those moneys is not disputed by claimants other than the offender.

(13) Nothing in this section affects the right of any person to recover compensation under the Criminal Injuries (Compensation) Act 1973 or by civil proceedings for damages.

[Section 70I inserted by 2001:29 s.3 effective 29 October 2001]

Deprivation Orders

70IA (1) Where, upon application by the Director of Public Prosecutions, the court that heard the criminal case, is satisfied that property is tainted property in respect of an offence of which a person has been convicted, the court may order that the specified property be deprived from the convicted person.

(2) In determining whether property is tainted property the court may infer, in the absence of evidence to the contrary, that the property was used in or in connection with the commission of an offence if it was in the person's possession at the time of, or immediately after the commission of the offence for which the person was convicted.

(3) In considering whether a deprivation order should be made under subsection (1), the court shall have regard to—

(a) the rights and interests, if any, of third parties in the property;

(b) the gravity of the offence concerned;

(c) any hardship that may reasonably be expected to be caused to any person by the operation of the order; and

(d) the use that is ordinarily made of the property, or the use to which the property was intended to be put.

(4) An order under this section shall operate to deprive the offender of his rights, if any, in the property to which it relates and the property shall (if not already in their possession) be taken into the possession of the police.

(5) Subject to subsection (3) property deprived from a person under subsection (1) may, after the expiry of six months from the date of the deprivation order, be disposed of and the proceeds shall be deposited into the Confiscated Asset Fund.

[Section 70IA inserted by 2013 : 30 s. 14 effective 8 November 2013]

IMPRISONMENT

Calculation of terms of imprisonment

70J (1) Subject to this section, a sentence of imprisonment passed by the Supreme Court or a court of summary jurisdiction shall, unless the court otherwise directs, have effect from and include the day on which it was passed.

(2) Where a person who is undergoing, or has been sentenced to undergo, imprisonment for an offence, is convicted of another offence, any sentence of imprisonment imposed on him for that other offence shall, unless the court otherwise directs, take effect from the time when the offender would otherwise be released from prison under the previous sentence of imprisonment.

(3) Where a person sentenced to imprisonment by a court of summary jurisdiction appeals against his conviction or sentence to the Supreme Court, the period of time spent by him in prison under that sentence before the determination or abandonment of his appeal shall, unless the Supreme Court otherwise orders, be deducted from the term of imprisonment (if any) which he is required to serve by virtue of the determination of the appeal.

[Section 70J inserted by 2001:29 s.3 effective 29 October 2001]

Unlawful gang and unlawful gang activity - interpretation

70JA (1) For the purpose of this section and section 70JB —

"unlawful gang" means a group, however organised, that—

(a) is composed of three or more persons; and

(b) has as one of its purposes or activities the facilitation or commission of one or more offences, that, if committed, would likely result in the direct or indirect receipt of a material benefit (including a financial benefit), by the group or by one of the persons who constitute the group;

"unlawful gang activity" means unlawful criminal acts committed by—

(a) an unlawful gang; or

(b) a person participating in or actively contributing to the activity of an unlawful gang.

(2) In determining whether a person participates in or actively contributes to unlawful gang activity, the court may consider if the person—

(a) uses a name, word, symbol, or other representation that identifies, or is associated with, an unlawful gang;

(b) frequently associates with any of the persons who constitute an unlawful gang;

(c) receives any benefit from an unlawful gang; or

(d) frequently engages in activities at the instruction of any of the persons who constitute an unlawful gang.

[Section 70JA inserted by 2012 : 29 s. 3 effective 20 July 2012 until 31 December 2015; extended until 31 December 2018 by BR 106 / 2015 para. 2 effective 23 December 2015; subject to further extension by notice in Gazette - see 2012 : 29 s. 4; extended until 31 December 2021 by BR 148 / 2018 para. 2 effective 18 December 2018]

Unlawful gang activity - increased penalty

70JB (1) Where a person is being sentenced for an offence which (whether wholly or partly) falls within the definition of unlawful gang activity, the court shall—

(a) first determine the sentence ("the basic sentence") in accordance with established principles but without regard to this section; then

(b) where the basic sentence includes a term of imprisonment or a fine, increase the sentence by adding an additional element determined in accordance with subsection (2).

(2) The additional element shall be—

(a) a term of imprisonment of at least one year but not more than five years, where the basic sentence includes a term of imprisonment of five years or more; or

(b) a term of imprisonment of not more than one year, where the basic sentence includes a term of imprisonment for less than five years; or

(c) a fine of at least $1,000 but not more than $10,000, where the basic sentence includes a fine.

(2A) Notwithstanding any requirement under subsections (1) and (2), the court may impose an additional penalty of a fine of at least $1,000, but not more than $10,000 to any basic sentence.

(3) The court shall not add an additional element under this section where the basic sentence is one of imprisonment for life.

[Section 70JB inserted by 2012 : 29 s. 3 effective 20 July 2012 until 31 December 2015; extended until 31 December 2018 by BR 106 / 2015 para. 2 effective 23 December 2015; subject to further extension by notice in Gazette - see 2012 : 29 s. 4; subsections (2)(a) and (2)(b) deleted and substituted and subsection (2A) inserted by 2014 : 14 s. 2 effective 19 September 2014; Section 70JB extended until 31 December 2021 by BR 148 / 2018 para. 2 effective 18 December 2018]

Suspended sentence of imprisonment

70K (1) If a court sentences an offender to imprisonment for 5 years or less it may order that the term of imprisonment be suspended in whole or in part during the period specified in the order ("the operational period"), which period shall not exceed 5 years, if the court is satisfied that it is appropriate to do so in the circumstances.

(2) A court shall not make an order under subsection (1) if it would not have sentenced the offender to imprisonment in the absence of power to make an order suspending the sentence.

(3) Before making an order under subsection (1) the court shall explain to the offender in ordinary language his liability under subsection (5) if during the operational period he commits in Bermuda an offence for which he is sentenced to imprisonment.

(4) A court making an order under subsection (1) shall specify a suspended sentence that corresponds in length to the sentence of imprisonment that it would have imposed in the absence of power to make an order suspending the sentence.

(5) Where an offender whose term of imprisonment has been suspended under this section is convicted of a further offence which is committed during the operational period and for which he is sentenced to imprisonment, the court which sentences the offender for the further offence shall order that the suspended sentence shall take effect unless it is of the opinion that it is unjust to do so in view of all the circumstances which have arisen since the suspended sentence was imposed, including the further offence.

(6) Where a court decides under subsection (5) that it would be unjust for a suspended sentence to take effect, the court shall—

(a) order that the suspended sentence—

(i) take effect with a substitution of a lesser term of imprisonment; or

(ii) be cancelled and be replaced by any non-custodial sentence that could have been imposed on the offender at the time when the offender was convicted of the offence for which the suspended sentence was imposed; or

(b) decline to make any order referred to in paragraph (a) concerning the suspended sentence.

(7) Where pursuant to subsection (5) or subsection (6) a court orders that the suspended sentence shall take effect, the sentence shall commence on the date of the making of that order.

(8) Where a court imposes a suspended sentence for one offence, the court may also impose suspended sentences under subsection (1) for other offences for which the offender has appeared for sentence, so long as the total period of all suspended sentences to which the offender is subject does not exceed 5 years from the date of the commencement of the first such sentence, and, where two or more suspended sentences are imposed on an offender, the sentences shall be served concurrently.

(9) For the purposes of any Act conferring rights of appeal in criminal cases any order made by a court under this section shall be treated as a sentence passed on the offender by that court for the offence for which the suspended sentence was passed.

[Section 70K inserted by 2001:29 s.3 effective 29 October 2001]

Intermittent sentences

70L (1) Where the court imposes a sentence of imprisonment of 90 days or less on an offender convicted of an offence, the court may, having regard to—

(a) the age and character of the offender;

(b) the nature of the offence and the circumstances surrounding its commission; and

(c) the availability of the appropriate accommodation to ensure compliance with the sentence,

order—

(d) that the sentence be served intermittently at such time as is specified in the order; and

(e) that the offender comply with conditions in a probation order when not in confinement during the period that the sentence is being served and, if the court so orders, on release from prison after completing the intermittent sentence.

(2) An offender who is ordered to serve a sentence of imprisonment intermittently may, on giving notice to the prosecutor, apply to the court that imposed the sentence to allow it to be served on consecutive days.

(3) Where a court imposes a sentence of imprisonment on a person who is subject to an intermittent sentence in respect of another offence, the unexpired portion of the intermittent sentence shall be served on consecutive days unless the court otherwise orders.

[Section 70L inserted by 2001:29 s.3 effective 29 October 2001]

Effect of escape on punishment

70M A person undergoing a sentence of imprisonment who escapes from lawful custody is liable on recapture to undergo the punishment which he was undergoing at the time of his escape for a period equal to that during which he was absent from prison after his escape and before the expiration of the term of his sentence, whether that term has or has not expired at the time of his recapture.

[Section 70M inserted by 2001:29 s.3 effective 29 October 2001]

TRAINING, EDUCATIONAL AND REHABILITATION PROGRAMMES IN PRISON

Prison programmes

70N (1) Where the court, on sentencing an offender to a period of imprisonment of not less than 12 months, is satisfied that—

(a) a specified training, educational or rehabilitation programme that is relevant to the needs of the offender can be provided in prison; and

(b) the report of a qualified person, who has conducted an assessment of the offender, indicates that he would be suitable for enrolment in the specified programme,

the court may by order direct the Commissioner of Prisons to offer the specified programme to the offender.

(2) Where a specified programme has been offered by the Commissioner of Prisons to an offender—

(a) if the offender completes the programme and complies with all the requirements of the programme to the satisfaction of the Commissioner of Prisons, he shall be entitled to make an immediate application for release on licence;

(b) if the offender fails to complete the programme or fails to comply with all the requirements of the programme to the satisfaction of the Commissioner of Prisons, he shall not be entitled to apply for release on licence under section 70P after serving one-third of his sentence.

(3) Before making an order under subsection (1) the court shall explain to the offender in ordinary language the effect of subsection (2).

(4) In this section "qualified person" means a person approved by the Minister responsible for corrections as qualified to conduct an assessment under this section.

[Section 70N inserted by 2001:29 s.3 effective 29 October 2001; amended by BR 11/2009 reg. 2 effective 6 February 2009 ; See BR73/2001 effective 9 November 2001, which states that the following are approved by the Minister for the puposes of subsection (4): probation officers, prison psychologists, prison social workers, prison psychiatrists and assessment officers of the Bermuda assessment and Referral Centre; subsection (4) amended by BR 5/2011 para.5 effective 25 February 2011]

PAROLE

Life sentences

70O Any person who is sentenced to life imprisonment for an offence for which no minimum period of imprisonment has been ordered before he is eligible for release on licence shall serve at least 15 years of his imprisonment before any application for his release on licence may be entertained or granted by the Parole Board.

[Section 70O inserted by 2001:29 s.3 effective 29 October 2001; amended by 2014 : 14 s. 4 effective 19 September 2014]

Eligibility for parole generally

70P (1) Subject to section 70N, where no minimum period of imprisonment is provided before a person can apply for his release on licence a person must serve at least one-third of the term of imprisonment before any application for his release on licence may be entertained or granted by the Parole Board in the absence of an order made under subsection (3).

(2) Subsection (1) applies where the sentence was imposed before, on or after the date on which this section comes into operation.

(3) Notwithstanding subsection (1), where an offender receives a sentence of imprisonment for two years or more on conviction on indictment, the court, may, if satisfied, having regard to—

(a) the circumstances of the commission of the offence; and

(b) the character and circumstances of the offender,

that the expression of society's denunciation of the offence or the objective of specific or general deterrence so requires, order that the portion of the sentence that must be served before the offender may be released on licence is one-half of the sentence or 10 years, whichever is less.

[Section 70P inserted by 2001:29 s.3 effective 29 October 2001]

Eligibility for parole, persons under 18 convicted of murder

70Q Notwithstanding section 288 of this Act, where an offender who was under the age of 18 years at the time of the commission of the offence is convicted of murder and is sentenced to imprisonment for life, the offender shall not be eligible for release on licence until he has served—

(a) *[deleted by 2014 : 14]*

(b) 7 years, in the case of a person who was 16 or 17 years of age at the time of the commission of the offence.

[Section 70Q inserted by 2001:29 s.3 effective 29 October 2001; section amended, paragraph (a) deleted and paragraph (b) amended by 2014 : 14 s. 4 effective 19 September 2014]

Release on licence subject to completion of mandated programmes

70QA (1) Notwithstanding sections 70N, 70O, 70P and 70Q, a sex offender (as defined in section 329D) shall not be entitled—

(a) to apply for release on licence; or

(b) to be released on his earliest release date,

until any mandated programmes, contained in his case plan, are completed.

(2) In this section, "case plan" means a document that outlines goals, interventions, outcomes and strategies for the supervision of a sex offender, prepared by the Department of Corrections or the Department of Court Services (as the case may be).

[Section 70QA inserted by 2018 : 64 s. 2 effective 7 February 2019]

Conditions for parole

70R (1) A person released on licence under section 12 or section 13 of the Prisons Act 1979 is subject to the following conditions of parole—

(a) the person shall not commit any offence against the laws of Bermuda during the period of the Parole Order;

(b) the person shall appear before the Parole Board upon receipt of a notice—

(i) specifying the date, time and venue for the appearance delivered no later than 24 hours before the required appearance; or

(ii) requiring his immediate appearance before the Board in the case of a specified emergency or risk of harm or loss;

(c) the person shall be under the supervision of a supervising officer designated by the Director responsible for the administration of parole, and shall respond in a timely manner to any query relating to the observance of parole conditions and generally relating to the observance of the laws of Bermuda;

(d) the person shall report to the supervising officer at the place, date and time stipulated by the supervising officer;

(e) the person shall not deceive when giving, or fail to disclose, any information relating to compliance with parole conditions and generally relating to the observance of the laws of Bermuda as may be required by the supervising officer or the Parole Board;

(f) the person shall, where applicable and employment is available, maintain regular employment with an employer specified in the Parole Order and shall obtain the permission of the supervising officer before making any changes to the employment;

(g) the person shall—

(i) reside at an address specified in the Parole Order;

(ii) immediately report any loss of accommodation or the necessity to change accommodation to the supervising officer; and

(iii) obtain the permission of the supervising officer for any alternative accommodation at which he may wish to reside;

(h) the person shall refrain from—

(i) associating with any person he knows or suspects to be involved in crime;

(ii) frequenting any place at which he knows or suspects that crime is committed; or

(iii) participating in activities that may lead to a crime being committed;

(i) the person shall submit to being tested for controlled substances or intoxicants as the Parole Board or supervising officer may direct.

(2) In addition to the conditions set out in subsection (1), or in substitution of any of the conditions set out in subsection (1) where the Parole Board deem it appropriate, the Parole Board may, before or after the release on licence of a person—

(a) specify in his licence any number of special conditions to be complied with, which may be determined by the needs and circumstances of the particular person being released on licence and the requirements for public protection;

(b) specify as a special condition in his licence a requirement for the person to refrain from—

(i) associating with a specific person or group of persons suspected of committing crime or of having influence on the person released on licence that is unsuitable for his rehabilitation and that may lead the person to commit a crime;

(ii) visiting or frequenting a specific place or specific places suspected to be a place or places where crime is or may be committed; or

(iii) participating in any specific activity that may lead to a crime being committed;

(c) endorse in whole or in part a recommendation by the supervising officer for the person released on licence to attend a special programme and specify such attendance as a special condition in his licence.

(3) A person released on licence who fails to comply with a condition or special condition of parole may be recalled by the Parole Board under section 12(5) of the Prisons Act 1979 or may be arrested as provided under section 70S of this Act.

[Section 70R inserted by 2014 : 4 s. 2 effective 26 March 2014]

Liability to arrest for breach of parole conditions

70S (1) A person who has been released on licence may be arrested without warrant by a police officer and detained in a prison—

(a) if that person has committed an offence;

(b) if the police officer has reasonable grounds, based on information provided by the supervising officer, for suspecting that the person has breached any of the conditions of his parole and the supervising officer considers it to be in the public interest to recall the person;

(c) if the police officer has reasonable grounds for suspecting that the person has breached any of the conditions of his parole and the breach puts public safety or order at immediate risk;

(d) in the case of a person who is subject to—

(i) residential restrictions, if that person is jeopardising the safety of any person at his residence;

(ii) maintaining regular employment with a specified employer, if that person is jeopardising the safety of any person at the place of employment;

(e) in the case of a person who is subject to a special condition that requires his attendance at a programme—

(i) if that person is jeopardising the safety of any person on the programme, or the order of the programme; or

(ii) if that person has failed to remain with the programme for its duration;

(f) if the police officer has reasonable grounds for suspecting that the person has failed to comply with an order—

(i) requiring the person to appear before the supervising officer or Parole Board on a stated day, time and place; or

(ii) recalling the person to a prison under section 12(5) of the Prisons Act 1979.

(2) Except in the case of subsection (1)(a), the arrest of a person under subsection (1) shall be treated as a recall of that person to prison in terms of section 12(5) of the Prisons Act 1979 and the person recalled shall be entitled to appear before the Parole Board in terms of section 12(5A) of the Prisons Act 1979 before the Parole Board makes a final decision regarding his recall.

[Section 70S inserted by 2014 : 4 s. 2 effective 26 March 2014]

Exception of probation orders etc made by Family Courts from provisions of this Act

71 *[Repealed by 2001:29]*

[Section 71 amended by 1998:38 effective 1 January 2000, and repealed by 2001:29 s.3 effective 29 October 2001]

Power to make community service order

71A (1) Where a person of over sixteen years of age is convicted of an offence punishable with imprisonment, the court by which he is convicted may, instead of dealing with him in any other way but subject to subsection (3) make an order (referred to in this Act as a "community service order") requiring him to perform unpaid work in accordance with this Part for such number of hours as may be specified in the order.

(2) Where a court makes a community service order in respect of any offender, the number of hours specified in such order shall not in the aggregate exceed 1000.

(3) A court shall not make a community service order in respect of any offender unless the offender consents and the court is satisfied, after considering a report by a probation officer about the offender and his circumstances and, if the court thinks it necessary, hearing evidence of a probation officer, that the offender is a suitable person to perform work under such all order.

(4) Where a court makes community service orders in respect of two or more offences of which the offender has been convicted by, or before the court, the court may direct that the hours of work specified in any of those orders shall be concurrent with or additional to those specified in any other of those orders, but so that the total number of hours which are not concurrent shall not exceed the maximum specified in subsection (2).

(5) Before making a community service order the court shall explain to the offender in ordinary language—

(a) the purpose and effect of the order and in particular the requirements of the order as specified in section 71B;

(b) the consequences which may follow under section 71C if he fails to comply with any of those requirements; and

(c) that the court has under section 71D the power to review the order on the application either of the offender or of a probation officer.

(6) The court by which a community service order is made shall forthwith give copies of the order to a probation officer assigned to the court and he shall give a copy to the offender and to the Director of Social Services.

[Section 71A subsection (2) amended by 2001:29 s.4 effective 29 October 2001]

Obligations of person subject to community service order

71B (1) An offender in respect of whom a community service order is in force shall—

(a) report to the Director and subsequently from time to time notify him of any change of address; and

(b) perform for the number of hours specified in the order such work at such times as he may be instructed by the Director.

(2) Subject to section 71D, the work required to be performed under a community service order shall be performed during the period of eighteen months beginning with the date of the order.

(3) The instructions given by the Director under this section shall, so far as practicable, be such as to avoid any conflict with the offender's religious beliefs and any interference with the times, if any, at which he normally works or attends a school or other educational establishment.

(4) In this section and section 71D "Director" means the public officer responsible for probation services.

[Section 71B subsections (1) to (3) amended, and (4) inserted, by 2001:29 s.5 effective 29 October 2001]

Breach of requirement of community service order

71C (1) If at any time while a community service order is in force in respect of an offender it appears on information to a court of summary jurisdiction that the offender has failed to comply with any of the requirements of section 71B (including any failure to perform satisfactorily the work which he has been instructed to do), the court may issue a summons requiring the offender to appear at the place and time specified therein, or may, if the information is in writing and on oath, issue a warrant for his arrest.

(2) Any summons or warrant issued under this section shall direct the offender to appear or be brought before a court of summary jurisdiction.

(3) If it is proved to the satisfaction of the Court before which an offender appears or is brought under this section that he has failed without reasonable excuse to comply with any of the requirements of section 71B the court may, without prejudice to the continuance of the order, impose on him a fine of $200 or may—

(a) if the community service order was made by a court of summary jurisdiction, revoke the order and deal with the offender for the offence in respect of which the order was made, in any manner in which he could have been dealt with for that offence by the court which made the order if the order had not been made;

(b) if the order was made by the Supreme Court, commit him to custody or release him on bail until he can be brought or appear before the Supreme Court.

(4) A court of summary jurisdiction which deals with an offender's case under subsection (3)(b) shall send to the Supreme Court a certificate signed by a magistrate certifying that the offender has failed to comply with the requirements of section 71B in the respect specified in the certificate, together with such other particulars of the case as may be desirable; and a certificate purporting to be so signed shall be admissible as evidence of the failure before the Supreme Court.

(5) Where by virtue of subsection (3)(b) the offender is brought or appears before the Supreme Court and it is proved to the satisfaction of the Court that he has failed to comply with any of the requirements of section 71B that court may either—

(a) without prejudice to the continuance of the order, impose on him a fine of $200; or

(b) revoke the order and deal with the offender for the offence in respect of which the order was made, in any manner in which he could have been dealt with for that offence by the court which made the order if the order had not been made.

(6) A person sentenced under subsection (3)(a) for an offence may appeal to the Supreme Court against the sentence.

(7) In proceedings before the Supreme Court under this section any question whether the offender, has failed to comply with the requirements of section 71B shall be determined by the court and not by the verdict of a jury.

[Section 71C subsection (5) "appeals" changed to "appears" under the authority of the Computerization and Revision of Laws Act 1989 s. 11(n)]

Amendment and revocation of community service order, and substitution of other sentence

71D (1) Where a community service order is in force in respect of any offender and, on the application of the offender or the Director, it appears to a court of summary jurisdiction that it would be in the interests of justice to do so having regard to circumstances which have arisen since the order was made, the court may exceed, in relation to the order, the period of eighteen months specified in section 71B.

(2) Where such an order is in force and on any such application it appears to a court of summary jurisdiction that, having regard to such circumstances, it would be in the interests of justice that the order should be revoked or that the offender should be dealt with in some other manner for the offence in respect of which the order was made, the court may—

(a) if the order was made by a court of summary jurisdiction revoke the order or revoke it and deal with the offender for that offence in any manner in which he could have been dealt with for that offence if the order had not been made;

(b) if the order was made by the Supreme Court, commit him to custody or release him on bail until he can be brought or appear before the Supreme Court,

and where the court deals with his case under paragraph (b) it shall send to the supreme Court such particulars of the case as may be desirable.

(3) Where by virtue of subsection (2)(b) the offender is brought or appears before the Supreme Court and it appears to the Supreme Court to be in the interests of justice to do so, having regard to circumstances which have arisen since the order was made, the Supreme Court may revoke the order, or revoke the order and deal with the offender for the offence in respect of which the order was made in any manner in which he could have been dealt with for that offence by the court which made the order if the order had not been made.

(4) A person sentenced under subsection (2)(a) for an offence may appeal to the Supreme Court against the sentence.

[Section 71D subsection (1) amended by 2001:29 s.6 effective 29 October 2001]

Sentencing of dangerous offender

71E (1) In this Part "dangerous offender" means a person suffering from a persistent disorder or disability of mind (whether or not including subnormality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the person whether or not he requires or is susceptible to medical treatment.

(2) Where any person is convicted in the Supreme Court of any offence punishable under this Act or any other law, and the Court is satisfied by evidence tendered by the prosecution upon each of the matters specified in subsection (4), the convicted person shall be sentenced to serve an indeterminate period of detention in a maximum security prison for a period of not less than two but not more than seven years.

(3) Where any person is convicted by a court of summary jurisdiction of an offence punishable under this Act or any other law and the Court is satisfied by evidence tendered by the prosecution upon each of the matters specified in subsection (4), the convicted person shall be committed in custody for sentence to the Supreme Court and if the Supreme Court is satisfied by such evidence, such person shall thereupon be sentenced in accordance with subsection (2).

(4) The evidence referred to in subsections (2) and (3) is evidence tending to show that—

(a) the convicted person has been assessed as a dangerous offender by at least two registered medical practitioners one of whom is a medical practitioner specializing in psychiatry;

(b) the convicted person is a danger to himself and to the community; and

(c) there is no other appropriate means of dealing with him having regard to those dangers.

(5) Where an assessment is made by a medical practitioner referred to in subsection (4)(a) a certificate of that assessment shall be admissible as evidence in a court of summary jurisdiction.

(6) A dangerous offender shall, during the period of his detention be assessed—

(a) by the Treatment of Offenders Board after he has served at least two years of his detention, and thereafter at successive periods of not more than twelve months at a time; and

(b) by a psychiatrist at successive periods of not more than twenty-four months,

and the Minister responsible for corrections may, after consideration of the reports submitted to him by the Treatment of Offenders Board and a psychiatrist, release at any time the person so detained.

(7) The Minister responsible for corrections may direct, after consideration of a psychiatrist's report relating to the assessment of a person sentenced under this section, that such person be transferred from a maximum security prison to a hospital or some other institution approved by the Minister for the reception of detainees under this section; and the Minister may from time to time after consideration of any further such report direct that such person be transferred back to a maximum security prison or between any such hospital or other institution as aforesaid.

[Section 71E amended by 1998 : 32 effective 13 July 1998; subsections (6) and (7) amended by BR 5/2011 para.5 effective 25 February 2011]

Police supervision of persistent offenders

72 (1) Where a person—

(a) is convicted on indictment of an offence punishable with imprisonment for a term of three years or more; and

(b) has been convicted on indictment, since he attained the age of sixteen years, of an offence punishable on indictment with such a term of imprisonment,

then the Court may, if it thinks fit, at the time of passing a sentence of imprisonment on such person, also order that he shall be subject to police supervision, as hereinafter in

this section provided, for a term not exceeding five years from the date of the expiration of the term of imprisonment.

(2) A person ordered to be subject to police supervision as aforesaid who is at large in Bermuda—

(a) shall report himself once in each month to the police officer in charge of the police station nearest to his place of residence at such time as may be directed by that officer, or as may be prescribed by rules made under this section; and

(b) shall notify his place of residence and any change in his place of residence at such time and place and in such manner and to such person as may be prescribed by rules made as aforesaid.

(3) The Governor, acting in his discretion, may make rules for carrying into effect subsections (1) and (2) ; and without prejudice to the generality of the foregoing provisions, rules made as aforesaid may make provision for recording on books or cards particulars relating to the requirement prescribed by subsection (2) or by such rules, and for the possession, carrying and production of such books or cards by persons subject to police supervision.

(4) Any person who, being subject to police supervision as aforesaid—

(a) fails without reasonable excuse (the proof of which shall be upon him) to comply with any of the requirements prescribed by subsection (2) or by any rule made under this section; or

(b) knowingly makes any false statement in connection with any such requirement,

is guilty of a summary offence and is liable to a fine of $120 or to imprisonment for six months, or to both such fine and imprisonment.

(5) It shall be lawful for the Governor in any particular case to remit or mitigate any requirement imposed on a person by virtue of this section.

Effect of pardon

73 A pardon by the Governor, on behalf of Her Majesty, has the effect of discharging the convicted person from the consequences of the conviction; and the Governor may extend the Royal Mercy to any person although he is imprisoned by virtue of any summary conviction for nonpayment of money which is payable to some private person.

Effect of endurance of punishment for offence

74 Where any person who, having been convicted of an offence, endures, subject to and in accordance with the provisions of this or any other Act, the punishment (if any) to which he was sentenced, then the endurance of such punishment shall be deemed to have the same effect and consequences as a pardon granted under the Great Seal in respect of that offence:

Provided that nothing in the foregoing provisions of this section, nor the endurance of any punishment, shall be construed so as to abridge or derogate from any provision of law—

(a) relating to the manner in which a person convicted of an offence subsequent to a previous conviction of an offence may be dealt with by any court; or

(b) relating to any disability or disqualification imposed on a person by reason of his conviction of an offence.

[Section 74 amended by 1999:51 s.4 & Sch effective 23 December 1999]

Effect of summary conviction for indictable offences

75 When a person has been summarily convicted of an indictable offence, the conviction is to be deemed a conviction of a summary offence, and not of an indictable offence.

PART V

GENERAL PUNISHMENTS

Punishment for felony where no special punishment provided

76 A person convicted upon indictment of any felony, for which no other punishment is provided, is liable to imprisonment for four years.

[Section 76 amended by 1999:51 s.4 & Sch effective 23 December 1999]

Punishment for attempt to commit felony where no special punishment provided

77 Any person who attempts to commit a felony is liable, if no other punishment is provided, to imprisonment for two years.

Punishment for attempt to commit indictable offence where no special punishment provided

78 Any person who attempts to commit an indictable offence other than treason or felony is liable, if no other punishment is provided, to a punishment equal to one-half of the greatest punishment to which an offender convicted of the offence which he attempted to commit is liable.

Punishment for attempt to commit summary offence

79 Any person who attempts to commit any offence other than an indictable offence is guilty of an offence and is liable, if no other punishment is provided, to one-half of the greatest punishment to which an offender convicted of the offence which he attempted to commit is liable.

Punishment for being accessory after the fact to felony

80 Any person who becomes an accessory after the fact to a felony is guilty of a felony, and is liable, if no other punishment is provided, to imprisonment for two years.

Punishment for being accessory after the fact to misdemeanour

81 Any person who becomes an accessory after the fact to a misdemeanour is guilty of a misdemeanour, and is liable to a punishment equal to one-half of the greatest punishment to which the principal offender is liable on conviction.

DIVISION II

OFFENCES AGAINST PUBLIC AUTHORITY AND PUBLIC POLICY

PART VI

TREASON, MUTINY AND SEDITION

Treason

82 (1) Any person—

(a) who kills the Sovereign, or does her bodily harm tending to her death, or maiming or wounding, or imprisonment or restraint; or

(b) who kills the eldest son and heir apparent for the time being of the Sovereign, or the Queen Consort of the reigning King; or

(c) who forms an intention to do any such act as aforesaid and manifests such intention by any overt act; or

(d) who conspires with any other person to kill the Sovereign or to do her bodily harm tending to her death, or maiming or wounding, or imprisonment or restraint; or

(e) who levies war against the Sovereign—

(i) with intent to depose the Sovereign from the style, honour and royal name, of the Imperial Crown of the United Kingdom of Great Britain and Northern Ireland or of any other of Her Majesty's dominions, or of any other country which has been declared to be under Her Majesty's protection; or

(ii) in order by force or constraint to compel the Sovereign to change her measures or counsels, or in order to put any force or constraint upon, or in order to intimidate any House of Parliament or the Legislature or legislative authority of any of Her Majesty's dominions; or

(f) who conspires with any other person to levy war against the Sovereign with any such intent or purpose as mentioned in paragraph (e); or

(g) who instigates any foreigner to make an armed invasion of any part of Her Majesty's dominions; or

(h) who assists by any means whatsoever any public enemy at war with the Sovereign; or

(i) who violates, whether with her consent or not, a Queen Consort, or the wife of the eldest son and heir apparent for the time being of the Sovereign,

commits the offence of treason and shall be sentenced to imprisonment for life.

(2) Where a person is sentenced under this section the court shall, having regard to the circumstances of the commission of the offence and character and circumstances of the offender, order the length of sentence that must be served before any application for release on licence may be granted by the Parole Board established under the Parole Board Act 2001.

[Section 82 amended by 1999:51 s.4 & Sch effective 23 December 1999; section amended to subsection (1) and subsection (2) inserted by 2014 : 14 s. 3 effective 19 September 2014]

Accessory after the fact to treason

83 Any person who becomes an accessory after the fact to treason is guilty of treason and is liable to punishment as for treason.

Concealment of treason

84 Any person who, knowing that any person intends to commit treason, does not give information thereof with all reasonable despatch to a Justice of the Peace or use other reasonable endeavours to prevent the commission of the offence, is guilty of a felony, and is liable to imprisonment for life.

Treasonable felonies

85 (1) Any person who forms an intention to effect any of the following purposes—

(a) to depose the Sovereign from the style, honour and royal name of the Imperial Crown of the United Kingdom of Great Britain and Northern Ireland, or of any other of Her Majesty's dominions, or of any country which has been declared to be under Her Majesty's protection; or

(b) to levy war against the Sovereign within any part of Her Majesty's dominions, or within any country which has been declared to be under Her Majesty's protection, in order by force or constraint to compel the Sovereign to change her measures or counsels, or in order to put any force or constraint upon, or in order to intimidate or overawe, any House of Parliament or Legislature or legislative authority of any of Her Majesty's dominions, or of any country which has been declared to be under Her Majesty's protection; or

(c) to instigate any foreigner to make an armed invasion of Her Majesty's dominions, or of any country which has been declared to be under Her Majesty's protection,

and manifests such intention by any overt act, is guilty of a felony, and is liable to imprisonment for seven years.

(2) A person charged with any of the felonies declared in this section is not entitled to be acquitted on the ground that any act proved to have been committed by him constitutes the offence of treason; but a person who has been tried, and convicted or acquitted, on a charge of any such offence cannot be afterwards prosecuted for treason in respect of the same facts.

(3) A person cannot be tried for any of the felonies declared in this section, where the overt act alleged consists of spoken words only, unless such words have been openly and advisedly spoken, and information thereof has been laid upon oath before a Justice of the Peace within six days after the words have been spoken; and a warrant for the apprehension of the person charged shall be issued within ten days after such information has been laid as aforesaid.

Two witnesses necessary

86 (1) A person charged with treason, or with any of the felonies declared in either of section 84 or 85, cannot be convicted, except on his own plea of guilty, or on the evidence in open court of two witnesses at the least to one overt act of the kind of treason alleged, or, except where the felony charged is one under section 85 and the overt act alleged consists of spoken words, the evidence of one witness to one overt act, and one other witness to another overt act of the same kind of treason.

(2) This section does not apply to cases in which the overt act of treason alleged is the killing of the Sovereign, or a direct attempt to endanger the life or injure the person of the Sovereign.

(3) On the trial of a person charged with treason evidence cannot be admitted of any overt act not alleged in the indictment.

Overt act

87 In the case of any of the offences declared in the foregoing provisions of this Part, when the manifestation by an overt act of an intention to effect any purpose is an element of the offence, then every act of conspiring with any person to effect that purpose, and every act done in furtherance of the purpose by any of the persons conspiring, is deemed to be an overt act manifesting the intention.

Inciting to mutiny

88 (1) Any person who advisedly attempts—

(a) to seduce any person serving in any of Her Majesty's Forces from his duty and allegiance to Her Majesty; or

(b) to incite any such person to commit any act of mutiny or any traitorous or mutinous act; or

(c) to incite any such persons to make or endeavour to make mutinous assembly, is guilty of a felony, and is liable to imprisonment for seven years.

(2) A person who has been tried, and convicted or acquitted, on a charge of any of the felonies declared in this section cannot be afterwards prosecuted for any other felony declared in the foregoing provisions of this Part or in section 90 (which section relates to assisting the escape of prisoners of war) in respect of the same facts.

(3) For the purposes of this section "Her Majesty's Forces" means the armed forces of Her Majesty or any of Her Majesty's dominions and includes the military force raised under the Defence Act 1965 [*title 7 item 21*] or other statutory provision of Bermuda.

Prisoner of war defined

89 In sections 90, 91 and 92 "prisoner of war" includes any convicted prisoner sent to Bermuda from any other part of Her Majesty's dominions while he is in Bermuda in the custody of any part of Her Majesty's Forces, whether he is in actual custody or is escaping or endeavouring to escape therefrom.

Assisting escape of prisoners of war

90 Any person—

(a) who knowingly and wilfully aids any prisoner of war who is confined in a prison or elsewhere in Bermuda to escape from his prison or place of confinement, or from Bermuda; or

(b) who knowingly and wilfully aids any prisoner of war in quitting, or in attempting to quit, Bermuda, although he does not aid such prisoner in quitting or attempting to quit the coast of any part of Bermuda,

is guilty of a felony, and is liable to imprisonment for five years.

Harbouring, concealing, etc prisoners of war

91 Any person who knowingly and wilfully harbours, conceals, secretes or succours any prisoner of war who has escaped from any prison or place of confinement in Bermuda in which he has been confined as a prisoner of war is guilty of a misdemeanour, and is liable to a fine of $1,200 or to imprisonment for three years.

Obstructing search of vessel for prisoner of war

92 Any person who hinders or obstructs any person or persons authorized by the officer commanding Her Majesty's troops in Bermuda to search any vessel in Bermuda for any prisoner of war who has escaped from any prison or place of confinement in Bermuda is guilty of a summary offence, and is liable to imprisonment for twelve months.

Interpretation for purposes of sections 94 to 96

93 (1) In the succeeding provisions of this Part the following expressions shall have the meanings respectively assigned to them in this section—

"import", in relation to a publication includes—

(i) to bring into Bermuda; and

(ii) to bring within the territorial waters of Bermuda, whether or not the publication is brought ashore, and whether or not there is an intention to bring the publication ashore;

"publication" includes all written or printed matter and everything, whether of a nature similar to written or printed matter or not, containing any visible representation, or by its form, shape, or in any manner capable of suggesting words or ideas, and every copy and reproduction of any publication;

"seditious publication" means a publication having a seditious intention;

"seditious words" means words having a seditious intention.

(2) A "seditious intention" is an intention—

(a) to bring into hatred or contempt or to excite disaffection against the person of Her Majesty, Her heirs or successors, or the Government or constitution of the United Kingdom or of Bermuda or of any other part of Her Majesty's dominions, as by law established, or either House of Parliament of the United Kingdom, or the Senate or House of Assembly of Bermuda; or

(b) to excite Her Majesty's subjects or other inhabitants of Bermuda to attempt to procure the alteration, otherwise than by lawful means, of any matter in Bermuda as by law established; or

(c) to bring into hatred or contempt, or to excite disaffection against, the administration of justice in Bermuda; or

(d) to raise discontent or disaffection amongst Her Majesty's subjects or other inhabitants of Bermuda; or

(e) to promote feelings of ill will and hostility between different classes of the population of Bermuda:

Provided that an act, speech or publication is not seditious by reason only that it intends—

(i) to show that Her Majesty has been misled or mistaken in any of her measures; or

(ii) to point out errors or defects in the government or constitution of the United Kingdom or of Bermuda or of any other part of Her Majesty's dominions as by law established, or in legislation, or in the administration of justice, with a view to the remedying of such errors or defects; or

(iii) to persuade Her Majesty's subjects or other inhabitants of Bermuda to attempt to procure by lawful means the alteration of any matter in Bermuda as by law established; or

(iv) to point out, with a view to their removal, any matters which are producing, or have a tendency to produce, feelings of ill will and enmity between different classes of the population of Bermuda.

(3) In determining whether the intention with which any act was done, any words were spoken, or any document was published, was or was not seditious, every person shall be deemed to intend the consequences which would naturally follow from his conduct at the time and under the circumstances in which he so conducted himself.

Punishment for offences relating to sedition

94 (1) Any person—

(a) who does or attempts to do, or makes any preparation to do, or conspires with any person to do, any act with a seditious intention; or

(b) who utters any seditious words; or

(c) who advisedly prints, publishes, sells, offers for sale, distributes or reproduces, any seditious publication; or

(d) who imports any seditious publication, unless he has no reason to believe that it is seditious,

is guilty of a misdemeanour and is liable in respect of a first offence to imprisonment for two years, or in respect of a subsequent offence to imprisonment for three years; and any such seditious publication shall be forfeited.

(2) Any person who without lawful excuse has in his possession any seditious publication is guilty of an offence and is liable in respect of a first offence on conviction by a court of summary jurisdiction to imprisonment for twelve months; and in respect of a subsequent offence, on conviction on indictment, to imprisonment for two years; and any such publication shall be forfeited.

(3) No prosecution for an offence under this section shall be begun except within six months after the offence is committed.

(4) A person shall not be prosecuted for an offence under this section without the written consent of the Director of Public Prosecutions.

(5) No person shall be convicted of an offence under this section on the uncorroborated testimony of one witness.

[Section 94 subsection (4) amended by 1999:8 s.2 & Sch 1 effective 1 April 1999]

Effect of prosecution

95 A person who has been tried, and convicted or acquitted, on a charge of any of the offences relating to sedition constituted by section 94 cannot afterwards be prosecuted upon the same facts for the offence of treason, or for the offence of failing, when he knows that any person intends to commit treason, to give information thereof with all reasonable despatch to a Justice of the Peace, or to use other reasonable endeavours to prevent the commission of the offence.

Defamation of Foreign Heads of State

96 (1) Any person who, without such justification or excuse as would be sufficient in the case of the defamation of a person who takes part in public affairs, publishes anything intended to be read, or any sign or visible representation, tending to expose to hatred or contempt in the estimation of the people of any Foreign State any Prince or person exercising sovereign authority over that State, is guilty of a misdemeanour and is liable on conviction by a court of summary jurisdiction to imprisonment for twelve months and on conviction on indictment to imprisonment for two years.

(2) No prosecution for an offence under this section shall be begun except within six months after the offence is committed.

(3) A person shall not be prosecuted for an offence under this section without the written consent of the Director of Public Prosecutions.

(4) No person shall be convicted of an offence under this section on the uncorroborated testimony of one witness.

[Section 96 subsection (3) amended by 1999:8 s.2 & Sch 1 effective 1 April 1999]

PART VII

OFFENCES AGAINST PUBLIC AUTHORITY, PUBLIC ORDER, THE ADMINISTRATION OF JUSTICE, PERSONAL LIBERTY ETC

Interference with Governor or Ministers

97 Any person—

(a) who advisedly does any act calculated to interfere with the free exercise by the Governor of the duties or authority of his office; or

(b) who advisedly does any act calculated to interfere with the free exercise by a Minister of the duties or authority of his office as Minister,

is guilty of a misdemeanour, and is liable on conviction by a court of summary jurisdiction to imprisonment for twelve months and on conviction on indictment to imprisonment for two years.

Constitution of offences relating to unlawful assembly and riot

98 (1) When three or more persons, with intent to carry out some common purpose, assemble in such a manner, or being assembled conduct themselves in such a manner, as to cause persons in the neighbourhood to fear on reasonable grounds that the persons so assembled will tumultuously disturb the peace, or will by such assembly needlessly and without any reasonable occasion provoke other persons tumultuously to disturb the peace, they are an unlawful assembly.

(2) It is immaterial that the original assembling was lawful if, being assembled, they conduct themselves with a common purpose in such a manner as aforesaid.

(3) An assembly of three or more persons who assemble for the purpose of protecting the house of any one of them against persons threatening to break and enter the house in order to commit a felony or misdemeanour therein is not an unlawful assembly.

(4) When an unlawful assembly has begun to act in so tumultuous a manner as to disturb the peace, the assembly is called a riot, and the persons assembled are said to be riotously assembled.

Unlawful assembly

99 Any person who takes part in an unlawful assembly is guilty of a summary offence, and is liable to imprisonment for twelve months.

Riot

100 Any person who takes part in a riot is guilty of a misdemeanour and is liable on conviction by a court of summary jurisdiction to imprisonment for twelve months, and on conviction on indictment to imprisonment for two years.

Making of proclamation

101 Whenever any persons, to the number of twelve or more, are riotously assembled together, any magistrate, any Justice of the Peace, or the Provost Marshal General, may go amongst them, or as near as he can safely come to them, and command or cause to be commanded with a loud voice that silence be kept while the proclamation next hereinafter mentioned is made, and then openly and with a loud voice make proclamation, or cause proclamation to be made, in these words or to the like effect:

> "Our Sovereign Lady the Queen charges and commands all persons here assembled immediately to disperse themselves and peaceably to depart to their habitations, or to their lawful business, or they will be guilty of felony, and will be liable to be imprisoned for three years. God Save the Queen".

Offences in connection with making of proclamation and remaining assembled after proclamation

102 (1) Any person who, wilfully and knowingly and by force, opposes, obstructs or hurts any person who goes to make or begins to make any proclamation in pursuance of section 101, and thereby prevents the proclamation being made, is guilty of a felony, and is liable to imprisonment for three years.

(2) Any persons who, being so assembled, continue together to the number of twelve or more, and do not disperse themselves within the space of an hour after the making of the proclamation, are each guilty of a felony, and are each liable to imprisonment for three years.

(3) When the making of the proclamation is prevented, any persons who, being so assembled, and to whom the proclamation would or ought to have been made if the making thereof had not been so prevented, and who, knowing of such prevention, continue together to the number of twelve or more, and do not disperse themselves within

the space of an hour after the time of such prevention, are each guilty of a felony, and are each liable to imprisonment for three years.

(4) A prosecution for any of the felonies declared by this section must be begun within a year after the felony is committed.

Rioters demolishing buildings etc

103 Any persons who, being riotously assembled together, unlawfully pull down or destroy, or begin to pull down or destroy—

(a) any building whatsoever; or

(b) any machinery whatsoever, whether fixed or movable; or

(c) any structure used in farming land, or in carrying on any trade or manufacture,

are each guilty of a felony, and each of them is liable to imprisonment for five years.

Rioters injuring buildings, machinery etc

104 Any persons who, being riotously assembled together, unlawfully damage any of the things mentioned in section 103 are each guilty of a felony, and each of them is liable to imprisonment for three years.

Going armed in public so as to cause terror

105 Any person who goes armed in public without lawful occasion in such a manner as to cause terror to any person is guilty of a summary offence, and is liable to imprisonment for twelve months.

Forcible entry on land

106 (1) Any person who, in a manner likely to cause a breach of the peace or reasonable apprehension of a breach of the peace, enters on land which is in the actual and peaceable possession of another person is guilty of a summary offence, and is liable to imprisonment for twelve months.

(2) It is immaterial whether he is entitled to enter on the land or not.

Forcible detainer of land

107 Any person who, being in actual possession of land without colour of right, holds possession of it, in a manner likely to cause a breach of the peace or reasonable apprehension of a breach of the peace, against a person entitled by law to the possession of the land, is guilty of a summary offence, and is liable to imprisonment for twelve months.

Affray

108 Any person who takes part in a fight in a public place is guilty of a summary offence, and is liable to imprisonment for twelve months.

Challenge to fight a duel

109 Any person who challenges another person to fight a duel, or who attempts to provoke another person to fight a duel, or who attempts to provoke any person to challenge another person to fight a duel, is guilty of a misdemeanour, and is liable on conviction by a court of summary jurisdiction to imprisonment for twelve months and on conviction on indictment to imprisonment for two years.

Prize fight

110 Any person who fights in a prize fight, or subscribes to or promotes a prize fight, is guilty of a summary offence, and is liable to imprisonment for twelve months.

Dispersal of groups and removal of persons under 17 to their place of residence

110A *[Expired]*

[Section 110A inserted by 2010 : 5 s. 3 effective 19 March 2010 until 31 December 2013; extended by notice BR 117 / 2013 effective 21 December 2013 until 31 December 2016; extended by notice BR 125 / 2016 effective 31 December 2016 and shall continue in force until 31 December 2019 unless further extended by notice in Gazette (see 2010 : 5 s. 10); further extended by notice BR 118 / 2019 effective 6 December 2019 until 31 December 2022 (see 2010 : 5 s. 10)]

Authorisations under section 110A: supplemental provisions

110B *[Expired]*

[Section 110B inserted by 2010 : 5 s. 3 effective 19 March 2010 until 31 December 2013; extended by notice BR 117 / 2013 effective 21 December 2013 until 31 December 2016; extended by notice BR 125 / 2016 effective 31 December 2016 and shall continue in force until 31 December 2019 unless further extended by notice in Gazette (see 2010 : 5 s. 10); further extended by notice BR 118 / 2019 effective 6 December 2019 until 31 December 2022 (see 2010 : 5 s. 10)]

Powers under section 110A: supplemental

110C *[Expired]*

[Section 110C inserted by 2010 : 5 s. 3 effective 19 March 2010 until 31 December 2013; extended by notice BR 117 / 2013 effective 21 December 2013 until 31 December 2016; extended by notice BR 125 / 2016 effective 31 December 2016 and shall continue in force until 31 December 2019 unless further extended by notice in Gazette (see 2010 : 5 s. 10); further extended by notice BR 118 / 2019 effective 6 December 2019 until 31 December 2022 (see 2010 : 5 s. 10)]

Official corruption

111 (1) Any person—

(a) who, being employed in the public service, or being the holder of any public office and being charged with the performance of any duty by virtue of such employment or office (not being a duty touching the administration of justice) corruptly asks, receives, or obtains, or agrees, or attempts to receive or obtain, any property or benefit of any kind for himself or for any other person on account of anything already done or omitted to be done, or to be afterwards done or omitted to be done, by him in the discharge of the duties of his office; or

(b) who corruptly gives, confers, or procures, or promises or offers to give or confer or to procure or attempt to procure, to, upon, or for, any person employed in the public service, or being the holder of any public office, or to, upon, or for, any other person, any property or benefit of any kind on account of any such act or omission on the part of the person so employed or holding such office,

is guilty of a misdemeanour, and is liable on summary conviction to a fine of $50,000 or to imprisonment for five years, or both; and on conviction on indictment to an unlimited fine or imprisonment for 15 years, or both.

(2) No person shall be charged with an offence under subsection (1) committed wholly on or after the commencement date of the Bribery Act 2016.

[Section 111 amended by 2013 : 30 s. 16 effective 8 November 2013; Section 111 amended by 2016 : 47 s. 24(1) & Sch 2 effective 1 September 2017]

Extortion by public officers

112 (1) Any person who, being employed in the public service, takes or accepts from any person, for the performance of his duty as such officer, any reward beyond his proper pay and emoluments or any promise of such reward, is guilty of an offence, and is liable on summary conviction to a fine of $50,000 or to imprisonment for five years, or both; and on conviction on indictment to an unlimited fine or imprisonment for 15 years, or both.

(2) No person shall be charged with an offence under subsection (1) committed wholly on or after the commencement date of the Bribery Act 2016.

[Section 112 amended by 2013 : 30 s. 16 effective 8 November 2013; Section 112 amended by 2016 : 47 s. 24(1) & Sch 2 effective 1 September 2017]

False claims by public officers

113 Any person who, being employed in the public service in such a capacity as to require him or to enable him to furnish returns or statements—

(a) touching any remuneration payable or claimed to be payable to himself or to any other person; or

(b) touching any other matter required by law to be certified for the purpose of any payment of money or delivery of goods to be made to any person,

makes a return or statement touching any such matter which is, to his knowledge, false in any material particular, is guilty of a summary offence, and is liable to imprisonment for twelve months.

Administering extrajudicial oaths

114 (1) Any person who administers an oath, or takes a solemn declaration or affirmation or affidavit, touching any matter with respect to which he has not by law any authority to do so, is guilty of a summary offence, and is liable to a fine not exceeding $600.

(2) This section does not apply—

(a) to an oath, declaration, affirmation or affidavit, administered or taken before a Justice of the Peace in any matter relating to the preservation of the peace or the punishment of offences or relating to inquiries respecting sudden death; or

(b) to proceedings before either the Senate or the House of Assembly or a committee of either House, or to proceedings before any court; or

(c) to an oath, declaration, affirmation or affidavit, administered or taken for some purpose which is lawful under the laws of another country or for the purpose of giving validity to an instrument in writing which is intended to be used in another country.

Definition of judicial proceeding

115 In sections 118, 119, 123, 124, 125, 125A, 125B and 126 "judicial proceeding" includes any proceeding had or taken in or before any court, tribunal or person, in which evidence may be taken on oath.

Judicial corruption

116 (1) Any person—

(a) who, being the holder of a judicial office, corruptly asks, receives, or obtains, or agrees or attempts to receive or obtain, any property or benefit of any kind for himself or for any other person on account of anything already done or omitted to be done, or to be afterwards done, or omitted to be done, by him in his judicial capacity; or

(b) who corruptly gives, confers, or procures, or promises or offers to give or confer, or to procure or attempt to procure, to, upon, or for, any person holding a judicial office, or to, upon, or for, any other person, any property or benefit of any kind on account of any such act or omission on the part of the person holding the judicial office,

is guilty of an offence, and is liable on summary conviction to a fine of $50,000 or to imprisonment for five years, or both; and on conviction on indictment to an unlimited fine or imprisonment for 15 years, or both.

(2) *[Repealed]*

(3) A prosecution for any of the offences constituted by paragraph (a) of subsection (1) cannot be begun except by the direction of the Director of Public Prosecutions.

(4) In this section "holder of a judicial office" includes an arbitrator or umpire; but in the case of an offence committed by or with respect to any such person the longest term of imprisonment is four years or to a fine of $50,000, or both.

(5) No person shall be charged with an offence under subsection (1) committed wholly on or after the commencement date of the Bribery Act 2016.

[Section 116 subsection (3) amended by 1999:8 s.2 & Sch 1 effective 1 April 1999; subsection (2) repealed by 2006:1 s.102 & Sch 4 effective 8 September 2008; subsections (1) and (4) amended by 2013 : 30 s. 16 effective 8 November 2013; subsection (5) inserted by 2016 : 47 s. 24(1) & Sch 2 effective 1 September 2017]

Official corruption not judicial but relating to offences

117 (1) Any person—

(a) who, being a Justice of the Peace not acting judicially, or being a person employed in the public service in any capacity not judicial for the prosecution or detention or punishment of offenders, corruptly asks, receives or obtains, or agrees or attempts to receive or obtain, any property or benefit of any kind for himself or for any other person, on account of anything already done or omitted to be done, or to be afterwards done or omitted to be done, by him, with a view to corrupt or improper interference with the due administration of justice, or the procurement or facilitation of the commission of any offence, or the protection of any offender or intending offender from detection or punishment; or

(b) who corruptly gives, confers or procures, or promises or offers to give or confer, or to procure or attempt to procure, to, upon, or for, any such person, or to, upon, or for, any other person, any property or benefit of any kind, on account of any such act or omission on the part of the justice, or other person so employed,

is guilty of an offence, and is liable on summary conviction to a fine of $50,000 or to imprisonment for five years, or both; and on conviction on indictment to an unlimited fine or imprisonment for 15 years, or both.

(2) The offender cannot be arrested without warrant.

(3) No person shall be charged with an offence under subsection (1) committed wholly on or after the commencement date of the Bribery Act 2016.

[Section 117 amended by 2013 : 30 s. 16 effective 8 November 2013; subsection (3) inserted by 2016 : 47 s. 24(1) & Sch 2 effective 1 September 2017]

Corrupting or threatening jurors

118 (1) Any person—

(a) who attempts by benefits or promises of benefit of any kind, or by other corrupt means, to influence any person, whether a particular person or not, in his conduct as a juror in any judicial proceeding whether he has been sworn as a juror or not; or

(aa) who attempts by threats or intimidation of any kind to influence any person, whether a particular person or not, in his conduct as a juror in any judicial proceeding whether he has been sworn as a juror or not; or

(b) who threatens to do any injury or cause any detriment of any kind to any person on account of anything done by him as a juror in any judicial proceeding; or

(c) who accepts any benefit or promise of benefit on account of anything to be done or that has been done by him as a juror in any judicial proceeding, whether he has been sworn as a juror or not, or on account of anything already done by him as a juror in any judicial proceeding,

is guilty of an offence, and is liable on summary conviction to a fine of $50,000 or to imprisonment for five years, or both; and on conviction on indictment to an unlimited fine or imprisonment for 15 years, or both.

(2) No person shall be charged with an offence under subsection (1)(a) or (c) committed wholly on or after the commencement date of the Bribery Act 2016.

[Section 118 headnote and section amended by 2013 : 30 s. 16 effective 8 November 2013; Section 118 amended by 2016 : 47 s. 24(1) & Sch 2 effective 1 September 2017]

Corrupting or threatening a holder of a judicial office or law enforcement official

118A (1) Any person—

(a) who attempts by benefits or promises of benefit of any kind, or by other corrupt means, to influence any person, whether a particular person or not, in his conduct as a holder of a judicial office or law enforcement official; or

(aa) who attempts by threats or intimidation of any kind to influence any person, whether a particular person or not, in his conduct as a holder of a judicial office or law enforcement official; or

(b) who threatens to do any injury or cause any detriment of any kind to any person on account of anything done by him as a holder of a judicial office or law enforcement official; or

(c) who accepts any benefit or promise of benefit on account of anything to be done or that has been done by him as a holder of a judicial office or law enforcement official,

is guilty of an offence:

Punishment on summary conviction: a fine of $50,000 or to imprisonment for 5 years, or both; and on conviction on indictment: a fine of $100,000 or imprisonment for ten years, or both.

(2) No person shall be charged with an offence under subsection (1)(a) or (c) committed wholly on or after the commencement date of the Bribery Act 2016.

[Section 118A inserted by 2013 : 30 s. 25 effective 8 November 2013; Section 118A amended by 2016 : 47 s. 24(1) & Sch 2 effective 1 September 2017]

Perjury

119 (1) Any person who, in any judicial proceeding, or for the purpose of instituting any judicial proceeding, knowingly gives false testimony or wilfully gives testimony which he does not believe to be true touching any matter which is material to any question then depending in that proceeding, or intended to be raised in that proceeding, is guilty of a misdemeanour which is called perjury.[1]

(2) It is immaterial whether the testimony is given on oath or under any other sanction authorized by law.

(3) The forms and ceremonies used in administering the oath or in otherwise binding the person giving the testimony to speak the truth are immaterial, if he assents to the forms and ceremonies actually used.

(4) It is immaterial whether the testimony is given orally or in writing.

(5) It is immaterial whether the court or tribunal is properly constituted, or is held in the proper place, or not, if it actually acts as a court or tribunal in the proceeding in which the testimony is given.

(6) It is immaterial whether the person who gives the testimony is a competent witness or not, or whether the testimony is admissible in the proceeding or not.

Punishment of perjury; evidence

120 (1) Any person who commits perjury is liable on summary conviction to a fine of $50,000 or to imprisonment for five years, or both; and on conviction on indictment to an unlimited fine or imprisonment for ten years, or both:

Provided that if the offender commits the offence in order to procure the conviction of another person for an offence punishable with imprisonment for life, the offender is liable to imprisonment for life.

(2) A person cannot be convicted of committing perjury, or of counselling or procuring the commission of perjury, upon the uncorroborated testimony of one witness as to the falsity of any statement alleged to be false.

[Section 120(1) proviso amended by 1999:51 s.4 & Sch effective 23 December 1999; subsection (1) amended by 2013 : 30 s. 16 effective 8 November 2013]

1 NOTE see also Evidence Act 1905 section 27V in Title 8 Item 10

Summary committal for trial in connection with perjury appearing to have been committed before Supreme Court

121 (1) If it appears to the Supreme Court that any person has been guilty of perjury in any testimony given before it, the court may commit him to take his trial in respect of such perjury before the court in the same manner as if he had been charged before a magistrate with the same perjury, and sufficient evidence had been given against him.

(2) A person so committed may be admitted to bail as if he had been committed for trial by a magistrate.

(3) The Supreme Court may require any person to enter into a recognizance conditioned to appear and give evidence at the trial of a person so directed to be prosecuted.

False statements tendered in evidence

122 (1) Any person who, in making a written statement which is subsequently tendered in evidence under section 29 of the Evidence Act 1905 or section 19 of the Indictable Offences Act 1929, wilfully states in that statement anything which he knows to be false or does not believe to be true is guilty of a offence and is liable on summary conviction to a fine of $50,000 or to imprisonment for five years, or both; and on conviction on indictment to an unlimited fine or imprisonment for ten years, or both.

(2) A person shall not be convicted of committing an offence against this section or of counselling or procuring the commission of an offence against this section, upon the uncorroborated testimony of one witness as to the falsity of any statement alleged to be false.

[Section 122 amended by 2013 : 30 s. 16 effective 8 November 2013]

Fabricating evidence

123 Any person who, with intent to mislead any tribunal in any judicial proceeding,—

(a) fabricates evidence by any means other than perjury or counselling or procuring the commission of perjury; or

(b) knowingly makes use of such fabricated evidence,

is guilty of an offence, and is liable on summary conviction to a fine of $50,000 or to imprisonment for five years, or both; and on conviction on indictment to an unlimited fine or imprisonment for ten years, or both.

[Section 123 amended by 2013 : 30 s. 16 effective 8 November 2013]

Contradictory statements with intent to mislead

124 (1) Any person who, being a witness in a judicial proceeding gives material evidence with respect to any matter of fact or knowledge and who subsequently in a judicial proceeding gives evidence that is contrary to his previous evidence in a material respect is, if his intent is to mislead the court or tribunal in either of the judicial proceedings guilty of an offence and is liable on summary conviction to a fine of $50,000

or to imprisonment for five years, or both; and on conviction on indictment to an unlimited fine or imprisonment for ten years, or both.

(2) In a prosecution under this section it shall not be incumbent upon the prosecutor to prove that either the prior or the latter evidence is false.

[Section 124 subsection (1) amended by 2013 : 30 s. 16 effective 8 November 2013]

Corruption of witnesses; preventing witnesses from attending court etc

125 (1) Any person—

(a) who gives, confers or procures, or promises or offers to give or confer, or to procure or attempt to procure, any property or benefit of any kind to, upon, or for, any person, upon any agreement or understanding that any person called or to be called as a witness in any judicial proceeding shall give false testimony or withhold true testimony; or

(b) who attempts by any other means to induce a person called or to be called as witness in any judicial proceeding to give false testimony; or

(c) who asks, receives or obtains, or agrees or attempts to receive or obtain, any property or benefit of any kind for himself or for any other person, upon any agreement or understanding that any person shall as a witness in any judicial proceeding give false testimony or withhold true testimony,

is guilty of an offence, and is liable on summary conviction to a fine of $50,000 or to imprisonment for five years, or both; and on conviction on indictment to an unlimited fine or imprisonment for ten years, or both.

(2) Any person—

(a) who gives, confers, or promises or offers to give or confer, or to procure or attempt, to procure, any property or benefit of any kind to, upon, or for any person, because such person gave false testimony or withheld true testimony in a judicial proceeding; or

(b) who asks, receives or obtains, or agrees or attempts to receive or obtain, any property or benefit of any kind for himself or for any person because he has given false testimony or withheld true testimony in a judicial proceeding,

is guilty of an offence, and is liable on summary conviction to a fine of $50,000 or to imprisonment for five years, or both; and on conviction on indictment to an unlimited fine or imprisonment for ten years, or both.

(3) Any person who wilfully prevents or attempts to prevent any person who has been duly summoned to attend as a witness before any court or tribunal from attending as a witness, or from producing anything in evidence pursuant to the subpoena or summons, is guilty of an offence and is liable on summary conviction to a fine of $50,000 or to imprisonment for five years, or both; and on conviction on indictment to an unlimited fine or imprisonment for ten years, or both.

(4) No person shall be charged with an offence under subsection (1)(a) or (c) or subsection (2) committed wholly on or after the commencement date of the Bribery Act 2016.

[Section 125 subsections (1), (2) and (3) amended by 2013 : 30 s. 16 effective 8 November 2013; subsection (4) inserted by 2016 : 47 s. 24(1) & Sch 2 effective 1 September 2017]

Intimidating a witness an offence

125A Any person who—

(a) threatens, intimidates or restrains;

(b) uses violence to or inflicts injury on;

(c) causes or procures violence, damage, loss or disadvantage to; or

(d) causes or procures the punishment of, or loss of employment of,

a person for or on account of his having appeared or being about to appear, as a witness in a judicial proceeding is guilty of an offence and shall be liable on summary conviction to a fine of $50,000 or to imprisonment for five years, or both; and on conviction on indictment to an unlimited fine or imprisonment for ten years, or both.

[Section 125A amended by 2013 : 30 s. 16 effective 8 November 2013]

Insulting a witness an offence

125B Any person who insults a person for or on account of his having appeared or being about to appear, as a witness in a judicial proceeding is guilty of a summary offence and shall be liable on summary conviction to a fine of $50,000 or to imprisonment for four years, or both.

[Section 125B amended by 2013 : 30 s. 16 effective 8 November 2013]

Destroying evidence

126 Any person who, knowing that any book, document or other thing of any kind, is or may be required in evidence in a judicial proceeding, wilfully destroys it or renders it illegible or undecipherable or incapable of identification, with intent thereby to prevent it from being used in evidence, is guilty of an offence, and is liable on summary conviction to a fine of $50,000 or to imprisonment for five years, or both; and on conviction on indictment to an unlimited fine or imprisonment for ten years, or both.

[Section 126 amended by 2013 : 30 s. 16 effective 8 November 2013]

Conspiring to bring false accusation

127 (1) Any person who conspires with another person to charge any person or cause any person to be charged with any offence, whether alleged to be committed in Bermuda or elsewhere, knowing that such person is innocent of the alleged offence, or not believing him to be guilty of the alleged offence, is guilty of an offence.

(2) If the offence is such that a person convicted of it is liable to be sentenced to imprisonment for life, the offender is liable to imprisonment for life.

(3) *[deleted by 2013 : 30]*

(4) In any other case the offender is liable on summary conviction to a fine of $50,000 or to imprisonment for five years, or both; and on conviction on indictment to an unlimited fine or imprisonment for ten years, or both.

[Section 127(2) amended by 1999:51 s.4 & Sch effective 23 December 1999; subsection (3) deleted by 2013 : 30 s. 15 effective 8 November 2013; subsections (1) and (4) amended by 2013 : 30 s. 16 effective 8 November 2013]

Conspiring to defeat justice

128 Any person who conspires with another person to obstruct, prevent, pervert or defeat, the course of justice, is guilty of an offence, and is liable on summary conviction to a fine of $50,000 or to imprisonment for five years, or both; and on conviction on indictment to an unlimited fine or imprisonment for ten years, or both.

[Section 128 amended by 2013 : 30 s. 16 effective 8 November 2013]

Compounding felony

129 Any person who asks, receives or obtains, or agrees or attempts to receive or obtain, any property or benefit of any kind for himself or for any other person upon any agreement or understanding—

(a) that he will compound or conceal an offence; or

(b) that he will abstain from, discontinue or delay, a prosecution for an offence; or

(c) that he will withhold any evidence of an offence,

is guilty of an offence, and is liable on summary conviction to a fine of $50,000 or to imprisonment for five years, or both; and on conviction on indictment to an unlimited fine or imprisonment for ten years, or both.

[Section 129 amended by 2013 : 30 s. 16 effective 8 November 2013]

Advertising a reward for the return of stolen property

130 Any person—

(a) who publicly offers a reward for the return of any property which has been stolen or lost, and in the offer makes use of any words purporting that no questions will be asked, or that the person producing such property will not be seized or molested; or

(b) who publicly offers to return to any person who may have bought or advanced money by way of loan upon any stolen or lost property the money so paid or advanced, or any other sum of money or reward for the return of such property; or

(c) who prints or publishes any such offer,

is guilty of a summary offence, and is liable to a fine of $1,200

Delaying taking of prisoner arrested before Justice

131 Any person who, having arrested another person upon a charge of an offence, wilfully delays to take him before a Justice of the Peace to be dealt with according to law, is guilty of a summary offence, and is liable to imprisonment for six months or to a fine of $1,200

Effecting a public mischief

132 (1) Any person who wilfully and knowingly makes to a person in authority any report or statement, being a report or statement—

(a) which alleges that any person (whether known or unknown) has committed an offence, or alleges that there are reasonable grounds for suspecting that any such person has committed, is committing or is about to commit, any offence; and

(b) which is false in a material particular,

is guilty of an offence which is called effecting a public mischief.

(2) Any person who effects a public mischief is liable on conviction by a court of summary jurisdiction to a fine not exceeding $1,200 or to imprisonment for six months or to both such fine and imprisonment, or on conviction on indictment to imprisonment for a term not exceeding two years or to a fine of $6,000 or to both such imprisonment and fine.

(3) In this section "person in authority" means any magistrate, Justice of the Peace, coroner, police officer or customs officer and any other officer responsible for the due execution of the policy of any Government Department or Government Board.

133 *[repealed by the Administration of Justice (Contempt of Court) Act 1979]*

Attempting to pervert course of justice

134 Any person who attempts, in any way not specially defined in this Act, to obstruct, prevent, pervert or defeat, the course of justice, is guilty of a summary offence, and is liable to imprisonment for twelve months.

Rescue from lawful custody

135 (1) Any person who by force rescues, or attempts to a rescue, from lawful custody any other person is guilty of a felony and is liable to imprisonment for three years.

(2) *[Deleted by 1999:51]*

(3) *[Deleted by 1999:51]*

(4) If the person rescued, or whose rescue is attempted, is in the custody of a private person, the offender must have notice of the fact that he is in such custody.

[Section 135(1) amended, and (2),(3) deleted, by 1999:51 s.4 & Sch effective 23 December 1999, and subsection (1) amended by 2000:3 s.2 effective 24 March 2000]

Escaping from lawful custody

136 Any person who, being in lawful custody, escapes from such custody is guilty of a misdemeanour, and is liable on conviction on indictment to imprisonment for two years and on conviction by a court of summary jurisdiction to imprisonment for six months or to a fine of $600 or to both such imprisonment and fine.

Aiding escape from lawful custody

137 Any person who aids any other person in escaping or attempting to escape from lawful custody is guilty of a misdemeanour, and is liable on conviction by a court of summary jurisdiction to imprisonment for twelve months and on conviction on indictment to imprisonment for two years.

Police officer wilfully permitting escape

138 (1) Any person who, being a police officer, wilfully permits a person in his lawful custody to escape is guilty of a felony is liable to imprisonment for three years.

(2) *[Deleted by 1999:51]*

(3) *[Deleted by 1999:51]*

[Section 138(1) amended, and (2),(3) deleted, by 1999:51 s.4 & Sch effective 23 December 1999, and subsection (1) amended by 2000:3 s.2 effective 24 March 2000]

Police officer negligently permitting escape

139 Any person who, being a police officer, negligently permits a person within his lawful custody to escape, is guilty of a misdemeanour, and is liable on conviction by a court of summary jurisdiction to imprisonment for twelve months and on conviction on indictment to imprisonment for two years or to a fine of $2,500

Harbouring escaped prisoners

140 Any person who harbours, maintains or employs a person who is to his knowledge an offender under sentence of such a kind as to involve deprivation of liberty, and illegally at large, is guilty of a misdemeanour, and is liable on conviction by a court of summary jurisdiction to imprisonment for twelve months and on conviction on indictment to imprisonment for two years, or to a fine of $2,500

Making false statement under oath or solemn declaration

141 (1) Any person who, on any occasion on which a person making a statement touching any matter is required by law to make it on oath, or under some sanction which may by law be substituted for an oath, or is required to verify it by solemn declaration or affirmation, makes a statement touching such matter which, in any material particular, is to his knowledge false, or which he does not believe to be true and verifies it on oath, or under such other sanction, or by solemn declaration or affirmation, is guilty of a misdemeanour, and is liable to imprisonment for five years.

(2) A person cannot be convicted of an offence under this section upon the uncorroborated testimony of one witness.

Making false declarations and statements

142 (1) Any person who, on any occasion on which he is permitted or required by law to make a statement or declaration a before any person authorized by law to permit it to be made before him, makes a statement or declaration before that person which, in any material particular, is to his knowledge false, is guilty of a misdemeanour, and is liable on conviction by a court of summary jurisdiction to imprisonment for twelve months and on conviction on indictment to imprisonment for three years.

(2) A person cannot be convicted of an offence under this section upon the uncorroborated testimony of one witness.

Obstructing officers of courts

143 Any person who wilfully obstructs or resists any person lawfully charged with the execution of any writ, order or warrant of any court, is guilty of a summary offence, and is liable to imprisonment for twelve months.

Resisting etc public officers

144 Any person—

(a) who in any manner obstructs or resists any public officer while engaged in the discharge or attempted discharge of the duties of his office under any Act or Act of the Parliament of the United Kingdom; or

(b) who obstructs or resists any person while engaged in the discharge of any duty imposed on him by any Act or Act of the Parliament of the United Kingdom,

is guilty of a summary offence, and is liable to imprisonment for twelve months.

False information to person employed in the public service

145 Any person who gives any public officer any information which he does not believe to be true intending thereby to cause, or knowing it to be likely that he will thereby cause, any public officer—

(a) to do or omit to do anything which such public officer would not otherwise do or omit to do; or

(b) to use the lawful power of such public officer to the injury or annoyance of any person,

is guilty of a misdemeanour, and is liable on conviction by a court of summary jurisdiction to imprisonment for twelve months and on conviction on indictment to imprisonment for two years.

Refusal by public officers to perform duty

146 Any person who, being employed as a public officer or as an officer of any court or tribunal, perversely and without lawful excuse omits or refuses to do any act which it is his duty to do by virtue of his employment, is guilty of a summary offence, and is liable to imprisonment for twelve months.

Neglect by public officers to suppress riot; neglecting to aid in suppressing riot

147 (1) Any person who, being a magistrate, a Justice of the Peace, the Provost Marshal General, or a police office, and having notice that there is a riot in his neighbourhood, omits, without reasonable excuse, to do his duty in suppressing such riot, is guilty of a misdemeanour, and is liable on conviction by a court of summary jurisdiction to a fine of $1,250, and on conviction on indictment to imprisonment for two years.

(2) Any person who, having reasonable notice that he is required to assist any officer named in subsection (1) in suppressing a riot, without reasonable excuse omits to do so, is guilty of a summary offence, and is liable to imprisonment for twelve months.

Neglecting to aid in arresting offenders

148 Any person who, having reasonable notice that he is required to assist any police officer in arresting any person, or in preserving the peace, omits, without reasonable excuse, to do so, is guilty of a summary offence, and is liable to imprisonment for twelve months.

Disobeying Act or Act of Parliament of United Kingdom

149 (1) Any person who, without lawful excuse, the proof of which lies on him,—

(a) does any act which he is, by any Act or Act of the Parliament of the United Kingdom, forbidden to do; or

(b) omits to do any act which he is, by the provisions of any such Act or Act of the Parliament of the United Kingdom required to do,

is guilty of a summary offence, unless some mode of proceeding against him for such disobedience is expressly provided by the Act or Act of the Parliament of the United Kingdom, and is intended to be exclusive of all other punishment.

(2) The offender is liable to a fine of $250

Disobeying lawful order issued by constituted authority

150 (1) Any person who, without lawful excuse, the proof of which lies on him, disobeys any lawful order issued by any court or by any person authorized by any Act or Act of the Parliament of the United Kingdom to make the order, is guilty of a summary offence, unless some mode of proceeding against him for such disobedience is expressly provided by the Act or Act of the Parliament of the United Kingdom, and is intended to be exclusive of all other punishment.

(2) The offender is liable to imprisonment for six months.

Interfering with political liberty

151 Any person who by violence, or by threats or intimidation of any kind, hinders or interferes with the free exercise of any political right by another person, is guilty of an offence, and is liable on conviction by a court of summary jurisdiction to imprisonment for twelve months:

Provided that if the offender is a public officer and commits the offence in abuse of his authority, he is liable on conviction by a court of summary jurisdiction to imprisonment for twelve months and on conviction on indictment to imprisonment for two years.

Disturbing religious worship

152 (1) Any person—

(a) who is guilty of riotous, violent or indecent behaviour in any place of religious worship, or in any churchyard or burial ground, whether during the celebration of divine service or at any other time; or

(b) who molests, lets, vexes, troubles or disquiets any minister of religion from lawfully officiating in any place of religious worship, or in any churchyard or burial ground,

is guilty of a summary offence, and is liable to a fine of $250, or to imprisonment for three months, or to both such fine and imprisonment.

(2) Any person found committing any offence against this section may be arrested by a police officer or church officer.

Common nuisances

153 (1) Any person—

(a) who obstructs any highway by any permanent work or erection thereon or injury thereto, which renders the highway less commodious to the public than it would otherwise be; or

(b) who prevents the public from having access to any part of a highway by an excessive and unreasonable temporary use thereof, or by so dealing with the land in the immediate neighbourhood of the highway as to prevent the public from using and enjoying it securely; or

(c) who does any act not warranted by law, or omits to discharge any legal duty, which act or omission obstructs or causes inconvenience or damage to the public in the exercise of rights common to the public,

is guilty of a summary offence, and is liable to imprisonment for twelve months.

(2) It is immaterial whether the act complained of is convenient to a larger number of the public than it inconveniences, but the fact that the act complained of facilitates the lawful exercise of their rights by a part of the public may show that it is not a nuisance to any of the public.

Keeping brothel etc

154 Any person who keeps a house, room, or set of rooms, or place of any kind whatsoever, for purposes of prostitution, is guilty of a misdemeanour, and is liable on conviction by a court of summary jurisdiction to imprisonment for twelve months, and on conviction on indictment to imprisonment for two years.

Keeping common gaming house

155 (1) Any person—

(a) who keeps for gain any place to which persons resort for the purpose of playing at any game of chance; or

(b) who keeps any place which is kept or used for playing therein at any game of chance, or any game of mixed chance and skill, and in which—

(i) a bank is kept by one or more of the players exclusively of the others; or

(ii) any game is played the chances of which are not alike favourable to all the players, including the banker or other persons by whom the game is managed, or against whom the other players stake, play or bet,

is said to keep a common gaming house.

(2) Any person who keeps a common gaming house is guilty of a misdemeanour, and is liable on conviction by a court of summary jurisdiction to imprisonment for twelve months, and on conviction on indictment to imprisonment for two years.

(3) This section does not apply in respect of a casino on a cruise ship licensed under section 6(1) of the Cruise Ship (Casinos) Act 2013.

(4) This section does not apply in respect of a casino operated pursuant to a valid licence granted under section 38 of the Gaming Act 2014.

[Section 155 subsection (3) inserted by 2013 : 34 s. 21 effective 17 April 2014; subsection (4) inserted by 2014 : 37 s. 202 effective 6 November 2015; Section 155 amended by 2021 : 23 s. 54 effective 1 August 2021]

Acting as keeper of brothel or gaming house

156 Any person who appears, acts or behaves as master or mistress, or as the person having the care or management, of any such house, room, set of rooms or place, as is mentioned in sections 154 and 155, is to be taken to be the keeper thereof, whether he is or is not the real keeper.

PART VIII

PIRACY

Definition of piracy in general

157 (1) In this Part "pirate" includes any person who on the high seas commits otherwise than as an act of war and under the authority of some Foreign Prince or State any act with respect to a ship, or any goods or merchandise belonging to a ship, or laden upon it, which, if the act were committed on land, would constitute robbery as hereinafter defined, and any person who, having on the high seas obtained possession of a ship by means of any such act, retains possession thereof.

(2) "pirate" also includes any person who is declared by any Act or Act of the Parliament of the United Kingdom to be a pirate.

(3) The act of any such person is called piracy.

Further definition of pirates

158 Any person who does any of the following acts is also deemed to be a pirate and his act is also called piracy, that is to say,—

(a) being a Commonwealth citizen, and being at any place within the jurisdiction of the Admiralty, commits, under colour of a commission from a Foreign State or Prince, whether such State or Prince is at war with the Sovereign or not, or under pretence of authority from any person whatsoever, any act of hostility, or any act which, if it were committed on land, would be robbery as defined in section 344, against another Commonwealth citizen; or

(b) being a Commonwealth citizen, is in any way adherent to, or gives aid to, Her Majesty's enemies at any place within the jurisdiction of the Admiralty during any war; or

(c) whether being a Commonwealth citizen or not, forcibly enters a British ship at any place within the jurisdiction of the Admiralty, and throws overboard or destroys any part of the goods or merchandise belonging to the ship or laden upon it; or

(d) being on board a British ship at any place within the jurisdiction of the Admiralty—

(i) turns pirate, enemy or rebel, and piratically runs away with the ship, or any boat, ordnance, ammunition or goods belonging to it or laden upon it; or

(ii) voluntarily yields up the ship or any such thing as last mentioned to a pirate; or

(iii) brings a seducing message from a pirate, enemy or rebel; or

(iv) consults or conspires with, or attempts to corrupt, the master or any officer of the ship, or any seafarer, with intent that he should run away with or yield up any ship, goods or merchandise, or turn pirate, or go over to pirates; or

(v) lays violent hands on the master of the ship with intent to hinder him from fighting in defence of the ship and goods committed to his trust; or

(vi) confines the master of the ship; or

(vii) makes, or endeavours to make, a revolt in the ship; or

(e) being a Commonwealth citizen in any part of the world, or, whether being a Commonwealth citizen or not, being in any part of Her Majesty's dominions, or on board a British ship in any part of the world—

(i) knowingly trades with a pirate in any manner whatsoever; or

(ii) knowingly furnishes a pirate with ammunition, provisions or stores of any kind; or

(iii) knowingly fits out a ship or vessel with a design to trade with, or supply or correspond with, a pirate; or

(iv) knowingly conspires or corresponds with a pirate.

[Section 158(d)(iv) amended by 2012 : 30 s. 27 effective 30 June 2014]

Punishment of piracy

159 Any person who, within the territorial jurisdiction of Bermuda, commits piracy, is guilty of a felony, and is liable to imprisonment for life.

[Section 159 amended by 1999:51 s.4 & Sch effective 23 December 1999]

Attempted piracy with personal violence

160 Any person who, within the territorial jurisdiction of Bermuda, does any of the following acts with intent to commit the offence of piracy with respect to a ship—

(a) assaults any person on board of or belonging to the ship, with intent to kill him or to kill any other person; or

(b) wounds any such person; or

(c) unlawfully does any act by which the life of any such person is endangered,

is guilty of a felony, and is liable to imprisonment for life.

[Section 160 amended by 1999:51 s.4 & Sch effective 23 December 1999]

Aiding pirates

161 Any person—

(a) who brings a seducing message from a pirate; or

(b) who consults or conspires with, or who attempts to corrupt, any master or officer of a ship or any seafarer, with intent that he should run away with or yield up any ship, goods or merchandise, or turn pirate, or go over to pirates,

is guilty of a felony, and is liable to imprisonment for life.

[Section 161(b) amended by 2012 : 30 s. 27 effective 30 June 2014]

Hijacking aircraft

162 Any person who, unlawfully, by force or threat thereof or by any other form of intimidation, seizes or exercises control of an aircraft with intent—

(a) to cause any person on board the aircraft to be confined or imprisoned against his will; or

(b) to cause any person on board the aircraft to be transported against his will to any place other than the next scheduled place of landing of the aircraft; or

(c) to hold any person on board the aircraft for ransom or to perform service against his will; or

(d) to cause the aircraft to deviate in a material respect from its flight plan,

is guilty of a felony and is liable to imprisonment for life.

Part IX

COUNTERFEITING AND KINDRED OFFENCES

[Part IX (sections 163 to 176) repealed and replaced by 2005:15 s.4 effective 1 April 2006; Part IX (sections 163 to 176) repealed and replaced by 2005:15 s.4 effective 1 April 2006. See 2005:15 s.13 (construction of references to offences)]

Interpretation of Part IX

Meaning of "currency note" and "protected coin"

163 (1) In this Part—

"Bermuda coin" means any coin which is legal tender in Bermuda;

"Bermuda currency note" means any note which is legal tender in Bermuda;

"currency note" means—

(a) any Bermuda currency note; or

(b) any note which—

(i) has been lawfully issued in some country or territory other than Bermuda; and

(ii) is customarily used as money in that country or territory;

"imitation Bermuda coin" means anything which resembles a Bermuda coin in shape, size and the substance of which it is made;

"protected coin" means any coin which—

(a) is a Bermuda coin;

(b) is customarily used as money in any country or territory; or

(c) is specified by the Minister of Finance for the purposes of this Part.

(2) The Minister of Finance may, by order subject to negative resolution procedure, specify coins for the purposes of this Part.

Offences

Offences of counterfeiting notes and coins

164 (1) It is an offence for a person to make a counterfeit of a currency note or of a protected coin, intending that he or another shall pass or tender it as genuine.

(2) It is an offence for a person to make a counterfeit of a currency note or of a protected coin without lawful authority or excuse.

Offences of passing etc. counterfeit notes and coins

165 (1) It is an offence for a person—

(a) to pass or tender as genuine any thing which is and which he knows or believes to be, a counterfeit of a currency note or of a protected coin; or

(b) to deliver to another any thing which is and which he knows or believes to be such a counterfeit intending that the person to whom it is delivered or another shall pass or tender it as genuine.

(2) It is an offence for a person to deliver to another without lawful authority or excuse any thing which is and which he knows or believes to be a counterfeit of a currency note or of a protected coin.

Offences involving the custody or control of counterfeit notes and coins

166 (1) It is an offence for a person to have in his custody or under his control anything which is and which he knows or believes to be a counterfeit of a currency note or of a protected coin, intending either to pass or tender it as genuine or to deliver it to another with the intention that he or another shall pass or tender it as genuine.

(2) It is an offence for a person to have in his custody or under his control, without lawful authority or excuse, any thing which is, and which he knows or believes to be, a counterfeit of a currency note or of a protected coin.

(3) It is immaterial for the purposes of subsections (1) and (2) that a coin or note is not in a fit state to be passed or tendered or that the making or counterfeiting of a coin or note has not been finished or perfected.

Offences involving the making or custody or control of counterfeiting materials and implements

167 (1) It is an offence for a person to make, or to have in his custody or under his control, any thing which he intends to use, or to permit any other person to use, for the purpose of making a counterfeit of a currency note or of a protected coin with the intention that it be passed or tendered as genuine.

(2) It is an offence for a person without lawful authority or excuse—

(a) to make; or

(b) to have in his custody or under his control;

any thing which, to his knowledge, is or has been specially designed or adapted for the making of a counterfeit of a currency note.

(3) Subject to subsection (4), it is an offence for a person to make, or to have in his custody or under his control, any implement which, to his knowledge, is capable of imparting to any thing a resemblance—

(a) to the whole or part of either side of a protected coin; or

(b) to the whole or part of the reverse of the image on either side of a protected coin.

(4) It shall be defence for a person charged with an offence under subsection (3) to show—

(a) that he made the implement or, as the case may be, had it in his custody or under his control, with the written consent of the Bermuda Monetary Authority; or

(b) that he had lawful authority otherwise than by virtue of paragraph (a), or a lawful excuse, for making it or having it in his custody or under his control.

The offence of reproducing Bermuda currency notes

168 It is an offence for any person, unless the Bermuda Monetary Authority has previously consented in writing, to reproduce on any substance whatsoever, and whether or not on the correct scale, any Bermuda currency note or any part of a Bermuda currency note.

Offences of making etc. imitation Bermuda coins

169 It is an offence for a person—

(a) to make an imitation Bermuda coin in connection with a scheme intended to promote the sale of any product or the making of contracts for the supply of any service; or

(b) to sell or distribute imitation Bermuda coins in connection with any such scheme or to have imitation Bermuda coins in his custody or under his control with a view to such sale or distribution;

unless the Bermuda Monetary Authority has previously consented in writing to the sale or distribution of such imitation Bermuda coins in connection with that scheme.

Prohibition of importation and exportation of counterfeits

Prohibition of importation of counterfeit notes and coins

170 The importation, landing or unloading of a counterfeit of a currency note or of a protected coin without the consent of the Bermuda Monetary Authority is hereby prohibited.

Prohibition of exportation of counterfeit notes and coins

171 The exportation of a counterfeit of a currency note or of a protected coin without the consent of the Bermuda Monetary Authority is prohibited.

Penalties for offences under Part IX

172 (1) A person guilty of an offence to which this subsection applies shall be liable on summary conviction to a fine of $10,000 or to imprisonment for 5 years, or both; and on conviction on indictment to a fine of $100,000 or to imprisonment for ten years, or both.

(2) The offences to which subsection (1) applies are offences under the following provisions of this Part—

(a) section 164(1);

(b) section 165(1);

(c) section 166(1) and

(d) section 167(1).

(3) A person guilty of an offence to which this subsection applies shall be liable on summary conviction to a fine of $5,000 or to imprisonment for two years, or both; and on conviction on indictment to a fine of $50,000 or to imprisonment for five years, or both.

(4) The offences to which subsection (3) applies are offences under the following provisions of this Part of this Act—

(a) section 164(2);

(b) section 165(2);

(c) section 166(2);

(d) section 167(2); and

(e) section 167(3).

(5) A person guilty of an offence under section 170 or 171 shall be liable on summary conviction to a fine of $10,000 and on conviction on indictment to a fine of $100,000.

Powers of search, forfeiture, etc.

173 (1) If it appears to a magistrate, from information given him on oath, that there is reasonable cause to believe that a person has in his custody or under his control—

(a) anything which is a counterfeit of a currency note or of a protected coin, or which is a reproduction made in contravention of section 168 or 169; or

(b) any thing which he or another has used, whether before or after the coming into force of this Part, or intends to use, for the making of any such counterfeit, or the making of any reproduction in contravention of section 168 or 169;

the magistrate may issue a warrant authorising a police officer to search for and seize the object in question, and for that purpose to enter any premises specified in the warrant.

(2) A police officer may at any time after the seizure of any object suspected of falling within paragraph (a) or (b) of subsection (1) (whether the seizure was effected by virtue of a warrant under that subsection or otherwise) apply to the Magistrates' Court for an order under this subsection with respect to the object; and the court, if it is satisfied both that the object in fact falls within one or other of those paragraphs and that it is conducive to the public interest to do so, may make such order as it thinks fit for the forfeiture of the object and its subsequent destruction or disposal.

(3) Subject to subsection (4), the court by or before which a person is convicted of an offence under this Part may order any thing shown to the satisfaction of the court to relate to the offence to be forfeited and either destroyed or dealt with in such other manner as the court may order.

(4) The court shall not order any thing to be forfeited under subsection (2) or (3) where a person claiming to be the owner of or otherwise interested in it applies to be heard by the court, unless an opportunity has been given to him to show cause why the order should not be made.

(5) Without prejudice to the generality of subsections (2) and (3), the powers conferred on the court by those subsections include power to direct that any object shall be passed to the Bermuda Monetary Authority or to any person authorised by such an authority to receive the object.

Directors' etc. liability

174 (1) Where an offence under section 168 or 169 which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

Power of arrest

175 Every offence under this Part is an offence for which an offender may be arrested without warrant, and the provisions of section 454 shall apply to all such offences.

PART X

OFFENCES AGAINST MORALITY

Interpretation of Part X

176A In this Part, where not inconsistent with the context—

"child", for the purposes of this section and sections 182C to 182H, means a person under the age of sixteen.

"child abusive material" means material that depicts or describes a child or a representation of a child who is, or appears to be, a victim of torture, cruelty or physical abuse in a way that a reasonable person would regard as being, in all the circumstances, an abuse of the child;

"child pornography" means—

(a) a photograph, film, video or other visual representation, whether or not it was made by electronic or mechanical means—

(i) that shows a child who is, or is depicted as being engaged in explicit sexual activity; or

(ii) the dominant characteristic of which is the depiction, for a sexual purpose, of a sexual organ or the anal region of a child;

(b) any written material or visual representation or audio recording that advocates or counsels sexual activity with a child; or

(c) any audio recording that has as its dominant characteristic the description, presentation or representation, for a sexual purpose, of sexual activity with a child.

"communications medium" includes any device used for processing, sending, receiving, and or retaining information, images or holograms; and

"intimate image"—

(a) means a moving or still image that depicts—

(i) the person engaged in an intimate sexual activity that is not ordinarily done in public;

(ii) the person's genital or anal region, when it is bare or covered only by underwear; or

(iii) the person's breasts;

(b) includes an image that has been altered to appear to show any of the things mentioned in paragraph (a); and

(c) includes an image depicting a thing mentioned in paragraph (a), even if the thing has been digitally obscured, if the person is depicted in a sexual way;

"material" includes—

(a) an object;

(b) a still visual image of any kind, whether a drawing, painting, photograph, or other representation on a surface of any kind, and whether printed or not;

(c) a moving visual image of any kind, whether produced from a cinematographic film, video tape, or other medium;

(d) a hologram;

(e) a written communication; and

(f) an audio recording.

"pornographic performance" means a live exhibition addressed to an audience, including by means of communications medium, of—

(a) a child who is, or is depicted as being engaged in real or simulated explicit sexual activity;

(b) which the dominant characteristic of which is the depiction, for a sexual purpose, of a sexual organ or anal region of a child;

"private act" means—

(a) showering or bathing;

(b) using a toilet;

(c) another activity when a person is in a state of undress; or

(d) intimate sexual activity that is not ordinarily done in public;

"private place" means a place where a person might reasonably be expected to be engaging in a private act;

"prohibited visual recording", of a person, means—

(a) a visual recording of the person, in a private place or engaging in a private act, made in circumstances where a reasonable adult would expect to be afforded privacy; or

(b) a visual recording of the person's genital or anal region, when it is bare or covered only by underwear, made in circumstances where a reasonable adult would expect to be afforded privacy in relation to that region;

"prostitute" means a person who on at least one occasion and whether or not compelled to do so engages, or offers to engage, in sexual activity with another person in return for payment or a promise of payment to the person or a third person, and "prostitution" shall be construed accordingly.

[Section 176A inserted by 2007:8 s.2 effective 7 May 2008; Section 176A defintions "pornographic performance" and "prostitute" inserted by 2019 : 36 s. 4 effective 1 November 2019; Section 176A definitions "intimate image", "private act", "private place" and "prohibited visual recording" inserted by 2021 : 20 s. 2 effective 15 June 2021]

Jurisdiction in cases of offences against a child committed abroad

176B (1) Where any person is charged with having committed any sexual offence, and the victim as defined under section 63(8) is a child, then—

(a) if he is—

(i) a British citizen or a British overseas territory citizen possessing Bermudian status;

(ii) a permanent resident in Bermuda within the meaning of the Bermuda Immigration and Protection Act 1956;

(iii) a person employed in Bermuda pursuant to a work permit as defined in the Bermuda Immigration and Protection Act 1956;

(b) if the child is—

(i) a person within the meaning of paragraph (a);

(ii) a person with permission to reside in Bermuda who is a child of a person within the meaning of paragraph (a), (b) or (c),

and he is found to be within the jurisdiction of any court in Bermuda which would have had jurisdiction in relation to the offence, within the limits of its ordinary jurisdiction to try the offence, that court shall have jurisdiction to try the offence as if it had been so committed.

(2) No prosecution shall be instituted under this section without the consent of the Director of Public Prosecutions.

[Section 176B inserted by 2019 : 36 s. 5 effective 1 November 2019]

Unlawful anal intercourse; attempts

177 (1) Subject to subsection (2), any person who—

(a) engages in an act of anal intercourse is guilty of an offence and liable on conviction by a court of summary jurisdiction to imprisonment for five years and on conviction on indictment to imprisonment for twenty years; and

(b) attempts to engage such an act is guilty of an offence and is liable on conviction by a court of summary jurisdiction to imprisonment for five

years and on conviction on indictment to imprisonment for a term not exceeding ten years.

(2) Subsection (1) does not apply to any act engaged in, in private between any two persons, each of whom is eighteen years or above the age of eighteen years, both of whom consent to the act.

[Section 177 amended by 1994:18 effective 2 September 1994; subsections (1) and (2) amended by 2006:26 s.2 & Sch effective 18 July 2006; Section 177 repealed and replaced by 2019 : 36 s. 6 effective 1 November 2019]

Unnatural offences with animals; attempts

178 (1) Any person who has carnal knowledge of an animal is guilty of a felony, and is liable to imprisonment for ten years.

(2) Any person who attempts to commit the offence constituted by subsection (1) is guilty of a misdemeanour, and is liable to imprisonment for five years.

Commission etc of acts of gross indecency between male persons

179 *[Repealed by 2019 : 36 s. 7]*

[Section 179 repealed by 2019 : 36 s. 7 effective 1 November 2019]

Carnal knowledge of girl under 14 years of age; attempts; alternative convictions of other offences

180 (1) Any person who has unlawful carnal knowledge of a girl under the age of fourteen years is guilty of a felony, and is liable to imprisonment for twenty-five years.

(2) Any person who attempts to have unlawful carnal knowledge of a girl under the age of fourteen years is guilty of a misdemeanour, and is liable to imprisonment for fifteen years.

(3) Upon an indictment charging a person with the offence of having unlawful carnal knowledge of a girl under the age of fourteen years—

(a) he may be convicted of any offence which is established by the evidence, and of which the unlawful carnal knowledge of a woman or girl, whether of a particular age or description or not, is an element, or of which procuring the woman or girl to have unlawful carnal connection with any man is an element; or

(b) he may be convicted of any of the offences mentioned in paragraph (c) of section 185 (procuring the unlawful carnal connection of a woman or girl by administering drugs) if any such offence is established by the evidence,

and a person convicted under any of the foregoing provisions of this subsection is liable to the same punishment as if he had been convicted on an indictment charging him with the offence of which he is actually convicted.

[Section 180 amended by 1993:2 effective 1 June 1993; subsection (1) amended by 2006:26 s.2 & Sch effective 18 July 2006]

Unlawful carnal knowledge of girl between 14 and 16 years of age; attempts

181 (1) Any person who has, or attempts to have, unlawful carnal knowledge of a girl of or above fourteen years of age and under sixteen years of age is guilty of a misdemeanour, and is liable on conviction by a court of summary jurisdiction to imprisonment for five years and on conviction on indictment to imprisonment for a term not exceeding twenty years.

(2) In the case of a person under eighteen years of age at the time of the commission of the offence, it shall be a defence, on one occasion only on which he is charged with an offence under this section, for him to prove that he had reasonable cause to believe and did in fact believe that the girl was of or above sixteen years of age.

(3) *[Repealed by 2019 : 36 s. 8]*

[Section 181 amended by 1993:2 effective 1 June 1993; subsection (2) amended by 2001:20 s.7(1) & Sch 2 effective 1 November 2001;subsection (1) amended by 2006:26 effective 18 July 2006; Section 181 subsection (3) repealed by 2019 : 36 s. 8 effective 1 November 2019]

Householder permitting unlawful carnal knowledge of child on his premises

182 (1) Any person who, being the owner or occupier of any premises, or having, or acting or assisting in, the management or control of any premises, induces or knowingly permits any child of such age as in this section mentioned to resort to or be in or upon such premises for the purpose of being unlawfully carnally known by any person, whether a particular person or not, is guilty of an offence.

(2) If the child is under fourteen years of age, he is guilty of a felony, and is liable to imprisonment for fifteen years.

(3) If the child is of or above fourteen, and under sixteen, years of age, he is guilty of a misdemeanour, and is liable on conviction by a court of summary jurisdiction to imprisonment for five years and on conviction on indictment to imprisonment for fifteen years.

(4) In the case of a person under eighteen years of age at the time of the commission of the offence, it shall be a defence, on one occasion only on which he is charged with any offence under this section, for him to prove that he had reasonable cause to believe and did in fact believe that the child was of or above sixteen years of age.

[Section 182 amended by 1993:2 effective 1 June 1993; subsection (4) amended by 2001:20 s.7(1) & Sch 2 effective 1 November 2001; Section 182 amended by 2019 : 36 s. 9 effective 1 November 2019]

Sexual exploitation of young person

182A (1) A person who—

(a) for a sexual purpose touches, directly or indirectly, with a part of the body or with an object, any part of the body of a young person; or

(b) for a sexual purpose invites, counsels or incites a young person to touch, directly or indirectly, with a part of the body or with an object, the body of any person, including the body of the person who so invites, counsels or incites and the body of the young person,

is guilty of an offence and is liable—

(aa) on conviction on indictment to imprisonment for twenty years;

(bb) on summary conviction to imprisonment for five years.

(2) "Young person" in this section means a person under the age of fourteen years.

[Section 182A added by 1993:2 effective 1 June 1993; subsection (1) amended by 2006:26 s.2 & Sch effective 18 July 2006]

Sexual exploitation of young person by a person in a position of trust

182B (1) A person who, being in a position of trust or authority towards a young person or being a person with whom a young person is in a relationship of dependency—

(a) for a sexual purpose touches, directly or indirectly, with a part of the body or with an object, any part of the body of the young person; or

(b) for a sexual purpose invites, counsels or incites a young person to touch, directly or indirectly, with a part of the body or with an object, the body of any person, including the body of the person who so invites, counsels or incites and the body of the young person,

is guilty of an offence and is liable—

(aa) on conviction on indictment to imprisonment for twenty-five years;

(bb) on summary conviction to imprisonment for five years.

(2) "Young person" in this section means a person under the age of sixteen years.

[Section 182B added by 1993:2 effective 1 June 1993; subsection (1) amended by 2006:26 s.2 & Sch effective 18 July 2006]

Showing child abusive material, child pornography or offensive material to a child

182C (1) Any person who knowingly shows child abusive material, child pornography or offensive material to a child is guilty of an offence and is liable—

(a) on conviction on indictment to imprisonment for ten years; or

(b) on summary conviction to imprisonment for five years.

(2) In this section "offensive material" means material that—

(a) describes, depicts, expresses, or otherwise deals with matters of sex, drug misuse or addiction, cruelty or violence or revolting or abhorrent phenomena, in a manner that is likely to offend a reasonable adult;

(b) describes, depicts, expresses or otherwise deals with sexual activity of any kind between a human being and an animal;

(c) is an obscene article within the meaning of the Obscene Publications Act 1973.

[Section 182C inserted by 2007:8 s.3 effective 7 May 2008]

Use of children in the production of child abusive material or child pornography

182D (1) Any person who, having custody, charge or care of a child, knowingly allows the child to be used for the production of child abusive material or child pornography is liable—

(a) on conviction on indictment to imprisonment for ten years; or

(b) on summary conviction to imprisonment for five years.

(2) For the purposes of this section—

(a) any person who is a parent or a guardian of a child is presumed to have custody of a child;

(b) any person to whose charge a child is committed by any person who has custody of the child is presumed to have charge of the child; and

(c) any person exercising authority over or having actual control of a child is presumed to have care of the child.

[Section 182D inserted by 2007:8 s.3 effective 7 May 2008]

Luring

182E (1) Any person who, whether orally or in writing, by means of a communications medium or in any other manner, communicates with a child, for the purpose of committing any of the acts described in sections 177(1), 180, 181(1), 182A(1), 182B(1), 184(1), 185(1), 187(1), 188(1) or 189 is guilty of an offence and is liable—

(a) on conviction on indictment to imprisonment for ten years; or

(b) on summary conviction to imprisonment for five years.

(2) It is no defence to a charge under this section that the accused believed that the person was over the age of sixteen years unless the accused took all reasonable steps to ascertain the age of the person.

[Section 182E inserted by 2007:8 s.3 effective 7 May 2008; Section 182E subsection (1) amended by 2020 : 37 s. 2 effective 19 August 2020]

Luring of young person by a person in a position of trust

182EA (1) A person who, being in a position of trust or authority towards a young person, or being a person with whom a young person is in a relationship of dependency communicates with the young person whether orally, in writing, by means of a communications medium or in any other manner for the purpose of committing any of the acts described in sections 177(1), 180, 181(1), 182A(1), 182B(1), 184(1), 185(1), 187(1), 188(1), 189, or 323, commits an offence.

(2) A person who is convicted of an offence under subsection (1) is liable—

(a) on conviction on indictment to imprisonment for fifteen years;

(b) on summary conviction to imprisonment for five years.

(3) It is no defence to a charge under this section that the accused believed that the person was eighteen years of age or older unless the accused took all reasonable steps to ascertain the age of the person.

(4) In this section, "young person" means a person under the age of eighteen years.

[Section 182EA inserted by 2020 : 37 s. 3 effective 19 August 2020]

Making, distributing, etc. of child abusive material or child pornography

182F (1) Any person who knowingly makes, prints or publishes child abusive material or child pornography is guilty of an offence and is liable—

(a) on conviction on indictment to imprisonment for ten years; or

(b) on summary conviction to imprisonment for five years.

(2) Any person who knowingly distributes, transmits, makes available, sells, imports or exports child abusive material or child pornography is guilty of an offence and is liable—

(a) on conviction on indictment to imprisonment for ten years; or

(b) on summary conviction to imprisonment for five years.

[Section 182F inserted by 2007:8 s.3 effective 7 May 2008]

Procuring child to participate in pornographic performances

182FA Any person who—

(a) procures or attempts to procure a child to engage in a pornographic performance;

(b) by threats or intimidation of any kind, procures, or attempts to procure a child to engage in a pornographic performance;

(c) by false pretence, procures, or attempts to procure a child to engage in a pornographic performance;

(d) administers to a child, or causes a child to take, or attempts to administer or cause a child to take, a drug or other thing with intent to stupefy or overpower the child to enable a pornographic performance to be engaged in with the person; or

(e) profits from procuring a child to engage in a pornographic performance;

is guilty of an offence, and is liable on summary conviction to imprisonment for five years and on conviction on indictment to imprisonment for ten years.

[Section 182FA inserted by 2019 : 36 s. 10 effective 1 November 2019]

Possession of child abusive material or child pornography

182G Any person who possesses child abusive material or child pornography for the purpose of making it available to, showing it to, or for viewing by, other persons, is guilty of an offence and is liable—

(a) on conviction on indictment to imprisonment for five years; or

(b) on summary conviction to imprisonment for three years.

[Section 182G inserted by 2007:8 s.3 effective 7 May 2008]

Accessing child abusive material or child pornography

182H (1) Any person who knowingly accesses child abusive material or child pornography is guilty of an offence and is liable—

(a) on conviction on indictment to imprisonment for five years;

(b) on summary conviction to imprisonment for three years.

(2) In subsection (1), a person accesses child abusive material or child pornography if the person knowingly causes child abusive material or child pornography to be viewed by, or transmitted to, himself.

(3) It is no defence to a charge under this section that the accused believed that the person was over the age of sixteen years of age unless the accused took all reasonable steps to ascertain the age of the person.

[Section 182H inserted by 2007:8 s.3 effective 7 May 2008]

Attendance at pornographic performance involving a child

182HA (1) A person who knowingly attends a pornographic performance in or from within Bermuda shall be guilty of an offence.

(2) A person guilty of an offence under subsection (1) shall be liable—

(a) on summary conviction to imprisonment for three years;

(b) on conviction on indictment to imprisonment for five years.

(3) It is not a defence to a charge under this section that the accused believed that the person was over the age of sixteen years unless the accused took all reasonable steps to ascertain the age of the person.

[Section 182HA inserted by 2019 : 36 s. 11 effective 1 November 2019]

Defences

182I (1) A person shall not be convicted of an offence under sections 182D or 182F to 182H if it is proved that the material in question is justified as being for the public good on the ground that it is in the interest of science, literature, art or learning.

(2) Whether the material is justified as being for the public good is to be a question of fact.

[Section 182I inserted by 2007:8 s.3 effective 7 May 2008]

Offence by Director and Officer

182J (1) Where an offence under section 182F or 182G is committed by a body corporate and is proved to have been committed with the acquiescence, consent or connivance of any person, being a director, officer or other similar officer of such body or a person who was purporting to act in any such capacity, that person as well as the body corporate shall be guilty of the offence.

(2) For the purposes of this section, where the affairs of a body corporate are managed by members, the member shall be deemed to be a director of the body corporate.

(3) Any person, being a director, officer, or other similar officer of a body corporate that is convicted of an offence under section 182F or 182G shall be liable—

(a) on conviction on indictment to imprisonment for ten years; or

(b) on summary conviction to imprisonment for five years.

(4) A body corporate that is convicted of an offence under section 182F or 182G shall be liable—

(a) on conviction on indictment to a fine of one million dollars; or

(b) on summary conviction to a fine of $20,000

and in addition such penalty imposed pursuant to paragraph (a) or (b), the Court may recommend the following with respect to the body corporate—

(c) exclusion from entitlement to public benefits or aid;

(d) temporary or permanent disqualification from the practice of commercial activities;

(e) placing under judicial supervision;

(f) judicial winding-up order;

[Section 182J inserted by 2007:8 s.3 effective 7 May 2008; Section 182J amended by 2019 : 36 s. 12 effective 1 November 2019]

Prosecution of offences

182K No prosecution shall be commenced under sections 182C to 182H or 182J without the prior consent of the Director of Public Prosecutions.

[Section 182K inserted by 2007:8 s.3 effective 7 May 2008]

Intercourse with person with severe mental impairment

183 (1) Subject to subsection (2), any person who has or attempts to have unlawful sexual intercourse with a person with severe mental impairment is guilty of an offence

and is liable on conviction by a court of summary jurisdiction to imprisonment for five years and on conviction on indictment to imprisonment for a term not exceeding twenty years.

(2) It shall be a defence to a charge under this section for the accused person to prove that he did not know and had no reason to suspect the person has a severe mental impairment.

(3) In this Act, "severe mental impairment" means a person suffering from a state of arrested or incomplete development of mind within the meaning of section 1 of the Mental Health Act 1968.

[Section 183 subsection (1) amended by 1999:51 s.4 & Sch effective 23 December 1999 and by 2006:26 s.2 & Sch effective 18 July 2006; Section 183 amended by 2019 : 36 s. 13 effective 1 November 2019]

Procuration; attempts

184 (1) Any person—

(a) who procures or attempts to procure a child to have unlawful carnal connection with any person, either in Bermuda or elsewhere; or

(b) who procures or attempts to procure a child or other person to become a common prostitute, either in Bermuda or elsewhere; or

(c) who procures or attempts to procure a child or other person to leave Bermuda with intent that the child or other person may become an inmate of a brothel elsewhere; or

(d) who procures or attempts to procure a child or other person to leave the child or other person's usual place of abode in Bermuda, such place not being a brothel, with intent that the child or other person may, for the purposes of prostitution, become an inmate of a brothel, either in Bermuda or elsewhere,

is guilty of a misdemeanour, and is liable on conviction by a court of summary jurisdiction to imprisonment for eighteen months and on conviction on indictment to imprisonment for three years.

(2) *[Deleted]*

(3) If the victim is a child, he is guilty of a misdemeanour, and is liable on conviction by a court of summary jurisdiction to imprisonment to two years and on conviction on indictment to imprisonment for four years.

[Section 184 amended by 1993:2 effective 1 June 1993; subsection (1) amended by 1999:51 s.4 & Sch effective 23 December 1999; subsection (1) amended by 2001:20 s.7(1) & Sch 2 effective 1 November 2001; Section 184 subsection (1) amended and subsection (3) inserted by 2019 : 36 s. 14 effective 1 November 2019]

Procuring unlawful carnal connection of person by threats, or fraud, or by administering drugs; attempts

185 (1) Any person—

(a) who by threats or intimidation of any kind, procures or attempts to procure a child or other person to have unlawful carnal connection with any person, either in Bermuda or elsewhere; or

(b) who by any false pretence or other fraudulent means procures a child or other person to have unlawful carnal connection with any person, either in Bermuda or elsewhere; or

(c) who applies or administers to a child or other person, or causes a child or other person to take, any drug or other thing with intent to stupefy or overpower the child or other person in order to enable any person, whether a particular person or not, to have unlawful carnal knowledge of the child or other person,

is guilty of a misdemeanour, and is liable on conviction by a court of summary jurisdiction to imprisonment for eighteen months and on conviction on indictment to imprisonment for three years.

(2) *[Deleted]*

(3) If the victim is a child, he is guilty of a misdemeanour, and is liable on conviction by a court of summary jurisdiction to imprisonment to three years and on conviction on indictment to imprisonment for six years.

[Section 185 amended by 1993:2 effective 1 June 1993; subsection (1) amended by 1999:51 s.4 & Sch effective 23 December 1999; Section 185 amended by 2019 : 36 s. 15 effective 1 November 2019; Section 185 heading and subsection (1) amended, and subsection (3) inserted by 2019 : 36 s. 15 effective 1 November 2019]

Obtaining prostitution from child

185A (1) Any person who obtains or attempts to obtain prostitution from a child and who the person knows, or ought to reasonably to know, is not an adult, is guilty of an offence and is liable on conviction by a court of summary jurisdiction for a term not exceeding five years.

(2) If the child who provides or is to provide the prostitution is under the age of fourteen years, the offender is liable on conviction on indictment to imprisonment for a term not exceeding twenty years.

[Section 185A inserted by 2019 : 36 s. 16 effective 1 November 2019]

Living on earnings of prostitution

186 (1) Any person who knowingly lives wholly or in part on the earnings of prostitution is guilty of a misdemeanour, and is liable on conviction by a court of summary jurisdiction to imprisonment for twelve months and on conviction on indictment to imprisonment for a term not exceeding two years.

(1A) If the victim is a child, he is guilty of a misdemeanour, and is liable on conviction by a court of summary jurisdiction to imprisonment for two years and on conviction on indictment to imprisonment for four years.

(2) Where a person is proved to live with, or to be habitually in the company of, a prostitute, or is proved to have exercised control, direction or influence over the movements or actions of a child or other person in such a manner as to show that he is aiding, abetting or compelling her prostitution, or aiding or encouraging the person's intended prostitution, with any other person or generally, he shall, unless he satisfies the court to the contrary, be deemed to be living knowingly on the earnings of prostitution.

(3) If it is made to appear to a magistrate by information on oath that there is reason to suspect that any house or any part of a house is used by a child or other person for purposes of prostitution, and that any person residing in or frequenting the house is living wholly or in part on the earnings of the prostitute, then the magistrate may issue a warrant authorizing any police officer to enter and search the house and to arrest that person.

[Section 186(1) amended by 1999:51 s.4 & Sch effective 23 December 1999; Section 186 amended by 2019 : 36 s. 17 effective 1 November 2019]

Exercising control over person with a view to prostitution

187 (1) Without prejudice to the effect of the provisions of section 186, any person—

(a) who, for the purposes of gain, exercises any control direction or influence over the movements or actions of a child or other person in such a manner as to show that he is aiding, abetting, or compelling the person's prostitution, or is aiding or encouraging the person's intended prostitution, with any person, or generally; or

(b) who, for the purposes of gain, arranges a meeting between any person and a child or other person, the meeting being arranged in such a manner as to show that he is aiding, abetting or compelling the person's prostitution, or is aiding or encouraging the person's intended prostitution, with that person,

is guilty of a summary offence, and is liable to imprisonment for twelve months or to a fine of $120 or to both such imprisonment and fine:

Provided that a person charged with an offence under this section may, instead of being proceeded against summarily for a summary offence, be proceeded against for an indictable offence (which shall be treated as a misdemeanour), and on conviction on indictment shall be liable to imprisonment for a term not exceeding two years.

(1A) If the victim is a child, he is guilty of a misdemeanour, and is liable on conviction by a court of summary jurisdiction to imprisonment to two years and on conviction on indictment to imprisonment for four years.

(2) Where a person charged with an offence under subsection (1) is proved to have exercised control, direction or influence over the movements or actions of a child or

other person, or to have arranged a meeting between any person and a child or other person, in such a manner as is mentioned in subsection (1)(a) or (b), then, unless he satisfies the court to the contrary, it shall be presumed that he did so for the purpose of gain.

[Section 187(1) amended by 1999:51 s.4 & Sch effective 23 December 1999; Section 187 amended by 2019 : 36 s. 18 effective 1 November 2019]

Abduction of child with intent to have carnal knowledge

188 (1) Any person who, with intent that an unmarried child may be unlawfully carnally known by any person, whether a particular person or not, takes the child or causes the child to be taken out of the custody or protection of the child's father or mother, or other person having the lawful care or charge of the child, and against the will of the child's father or mother, or other person, is guilty of a misdemeanour, and is liable on conviction by a court of summary jurisdiction to imprisonment for twelve months and on conviction on indictment to imprisonment for two years.

(2) It is a defence to a charge of any of the offences constituted by this section to prove that the accused person believed, on reasonable grounds, that the person taken was not a child.

[Section 188 amended by 2019 : 36 s. 19 effective 1 November 2019]

Conspiring to induce permission to have carnal knowledge

189 (1) Any person who conspires with another person to induce any child or other person, by means of any false pretence or other fraudulent means, to permit any person to have unlawful carnal knowledge of the child or other person, is guilty of a misdemeanour, and is liable on conviction by a court of summary jurisdiction to imprisonment for twelve months and on conviction on indictment to imprisonment for two years.

(2) If the victim is a child, he is guilty of a misdemeanour, and is liable on conviction by a court of summary jurisdiction to imprisonment to two years and on conviction on indictment to imprisonment for four years.

[Section 189 amended by 2019 : 36 s. 20 effective 1 November 2019]

Age and consent in certain cases

190 (1) Where an accused is charged with an offence-

(a) under section 182A; or

(b) under section 182B; or

(c) under section 323 or 324 or 325 or 326 in respect of a complainant under the age of sixteen years,

it is not a defence that the complainant consented to the activity that forms the subject-matter of the charge.

(2) Notwithstanding paragraph (a) of subsection (1), where an accused is charged with an offence under section 182A, it is a defence that the complainant consented to the activity that forms the subject-matter of the charge if the accused—

(a) is under the age of sixteen years; and

(b) is less than three years older than the complainant; and

(c) is neither in a position of trust or authority towards the complainant nor a person with whom the complainant is in a relationship of dependency.

(3) No person under the age of fourteen years shall be tried for an offence under section 182A unless he is in a position of trust or authority towards the complainant or is a person with whom the complainant is in a relationship of dependency.

(4) It is not a defence—

(a) to a charge under section 182A, that the accused believed that the complainant was fourteen years of age or older at the time the offence is alleged to have been committed; or

(b) to a charge under section 182B, or, where on a charge under section 323 or 324 or 325 or 326 it is alleged that the complainant consented to the activity that forms the subject-matter of the charge, to a charge under the said section 323 or 324 or 325 or 326, as the case may be, that the accused believed that the complainant was sixteen years of age or older at the time the offence is alleged to have been committed,

unless the accused proves that he had reasonable cause to have, and did in fact have, that belief at the time:

Provided that a defence shall not be available by virtue of this subsection—

(aa) in any circumstances, to an accused who was twenty-one years of age or older at that time; or

(bb) if an accused has once availed himself of such a defence to a charge under any of sections 182A, 182B, 323, 324, 325 and 326, ever again to that accused.

(5) Notwithstanding subsection (4), it is not a defence to a charge under section 182A or 182B or 323 or 324 or 325 or 326 that the accused believed that the complainant consented to the activity that forms the subject-matter of the charge if the complainant was in fact under fourteen years of age at the time the offence was committed.

(6) Except as otherwise expressly stated, it is immaterial, in the case of any of the offences constituted by the foregoing provisions of this Part or specified in subsection (1) of this section committed with respect to a complainant under a particular age, that the accused did not know that the complainant was under that age, or believed that the complainant was not under that age.

[Section 190 replaced by 1993 : 2 effective 1 June 1993]

Incest

191 (1) Any person who has carnal knowledge of a person who is to his knowledge by blood relationship his grandparent, grandchild, child, brother or sister, or parent, is guilty of a misdemeanour, and is liable on conviction on indictment to imprisonment for twenty years:

Provided that if, on an indictment for any such offence, it is alleged in the indictment and is proved that the offence was committed in respect of a child under the age of fourteen years the offender is liable to imprisonment for twenty-five years.

(2) It is immaterial that the carnal knowledge was had with the consent of the child or other person.

(3) If any person attempts to commit any such offence as aforesaid he is guilty of a misdemeanour, and is liable to imprisonment for three years.

(4) *[Deleted]*

(5) *[Repealed by 2019 : 36 s. 21]*

[Section 191 amended by 1993 : 2 effective 1 June 1993; Section 191 amended by 2019 : 36 s. 21 effective 1 November 2019]

Incest by woman

192 *[Repealed by 2019 : 36 s. 22]*

[Section 192 repealed by 2019 : 36 s. 22 effective 1 November 2019]

Test of relationship

193 In section 191 the expressions "brother" and "sister" respectively include half-brother and half-sister, and the provisions of the said sections shall apply whether the relationship between the person charged with an offence and the person with whom the offence is alleged to have been committed is or is not traced through lawful wedlock.

[Section 193 amended by 2019 : 36 s. 23 effective 1 November 2019]

Administering drugs etc with intent to procure miscarriage

194 Any person who, with intent to procure the miscarriage of a woman, whether she is or is not with child, unlawfully administers to her or causes her to take any poison or other noxious thing, or uses any force of any kind, or uses any other means whatsoever, is guilty of a felony, and is liable to imprisonment for three years.

Attempt by woman to procure own miscarriage

195 Any woman who with intent to procure her own miscarriage, whether she is or is not with child, unlawfully administers to herself any poison or other noxious thing, or uses any force of any kind, or uses any other means whatsoever, or permits any such thing or means to be administered or used to her, is guilty of a felony, and is liable to imprisonment for three years.

Supplying drugs or instruments to procure miscarriage

196 Any person who unlawfully supplies to or procures for any person any thing whatsoever, knowing that it is intended to be unlawfully used to procure the miscarriage of a woman, whether she is or is not with child, is guilty of a summary offence, and is liable to imprisonment for twelve months.

Medical termination of pregnancy

196A Sections 194, 195 and 196 do not apply to—

(a) a qualified medical practitioner or any person assisting him, who in good faith uses in a hospital any means for carrying out his intention to procure the miscarriage of a female person; or

(b) a female person who, being pregnant, permits a qualified medical practitioner to use in a hospital any means described in paragraph (a) for the purpose of carrying out her intention to procure her own miscarriage, if before the use of those means, the Therapeutic Abortion Committee for the hospital, by a majority of the members of the committee and at a meeting of the committee at which the case of such female person has been reviewed;

(c) has by certificate in writing stated that—

(i) in its opinion the pregnancy of such female person should be terminated as having in its opinion been the result of an incestuous relationship or of an offence under section 323, 324, 325 or 326 upon the said female person; or

(ii) in its opinion the continuation of the pregnancy of such female person would or would be likely to endanger her life or health; or

(iii) in its opinion there is a substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped; and

(d) has caused a copy of such certificate to be given to the qualified medical practitioner.

[Section 196A amended by 1993 : 2 effective 1 June 1993]

Notice by Chief Medical Officer to inform him whether certificate authorizing termination of pregnancy has been issued

196B The Chief Medical Officer may by notice in writing require the Therapeutic Abortion Committee of a hospital, or any member thereof, to inform him whether a certificate of the nature described in paragraph 196A(c) has been issued by that committee permitting the termination of a pregnancy.

Prohibition against disclosure of information

196C (1) Any information furnished to the Therapeutic Abortion Committee in pursuance of its functions under section 196A or to the Chief Medical Officer pursuant to

section 196B or any information contained in a certificate given to a qualified medical practitioner pursuant to section 196A(d) shall not be disclosed except in accordance with section 196A or 196B or to such persons or for such purposes as a court may direct.

(2) Any person who contravenes the provisions of section (1) shall be guilty of an offence and shall be liable on summary conviction to a fine of $2,000 or to imprisonment for six months or to both.

Interpretation

196D For the purposes of sections 196A, 196B and 196C—

"hospital" means the King Edward VII Memorial Hospital, or such other hospital as the Minister responsible for Health may, by order, designate for such purposes;

"qualified medical practitioner" means a person entitled to engage in the practice of medicine under the laws of Bermuda;

"Therapeutic Abortion Committee" in relation to a hospital means a committee comprised of not less than three members, each of whom is a qualified medical practitioner and at least one of whom is a qualified psychiatrist, appointed by the Hospitals Board after consultation with the Medical Staff Committee, for the purpose of considering and determining questions relating to terminations of pregnancy within that hospital; and "Hospitals Board" means the Bermuda Hospitals Board established under section 2 of the Bermuda Hospitals Board Act 1970 [*title 11 item 26*]

Doing indecent acts in public or with intent to offend etc

197 Any person—

(a) who wilfully and without lawful excuse does any indecent act in any public place; or

(b) who wilfully does any indecent act in any place with intent to insult or offend any person,

is guilty of a summary offence, and is liable to imprisonment for five years.

[Section 197 amended by 2006:26 s.2 & Sch effective 18 July 2006]

Acts of indecency involving children

198 (1) In this section "child" means any person under the age of fourteen years.

(2) Any person who wilfully and without reasonable excuse commits any indecent act in the presence of a child, intending the indecent act to be seen by a child, is guilty of an offence and is liable on conviction by a court of summary jurisdiction to imprisonment for five years and on conviction on indictment to imprisonment for a term not exceeding ten years.

(3) Any person who wilfully and without reasonable excuse—

(a) causes or induces a child to commit any indecent act with him or in his presence; or

(b) by word, sound or gesture invites or attempts to induce a child to commit any indecent act with him or in his presence,

is guilty of an offence and is liable on conviction by a court of summary jurisdiction to imprisonment for five years and on conviction on indictment to imprisonment for a term not exceeding twenty years.

(4) The foregoing provisions of this section shall have effect without prejudice to any other provision of this Act or any provision of any other Act.

(5) A prosecution shall not be instituted under this section without the consent of the Director of Public Prosecutions.

[Section 198 subsection (5) amended by 1999:8 s.2 & Sch 1 effective 1 April 1999; subsection (3) amended by 1999:51 s.4 & Sch effective 23 December 1999; subsections (2) and (3) amended by 2006:26 s.2 & Sch effective 18 July 2006]

Acts intruding upon the privacy of child or other person

199 (1) For the purposes of this section a person shall be deemed to intrude upon the privacy of a child or other person if wilfully upon and without lawful excuse—

(a) he accosts or follows that person; or

(b) he utters any word, makes any sound or gesture, or exhibits any object, or commits any indecent act, intending the word or sound to be heard by that person or the gesture or object or the indecent act to be seen by that person.

(2) Any person who intrudes upon the privacy of a child or other person in such a way as to be likely to alarm, insult or offend a child or other person and does in fact alarm, insult or offend the child or other person whose privacy he intrudes upon is guilty of an offence, and is liable on conviction by a court of summary jurisdiction to imprisonment for five years and on conviction on indictment to imprisonment for a term not exceeding ten years.

(2A) If the victim is a child, he is guilty of a misdemeanour, and is liable on conviction by a court of summary jurisdiction to imprisonment to five years and on conviction on indictment to imprisonment for twenty years.

(3) The foregoing provisions of this section shall have effect without prejudice to any other provision of this Act or any provision of any other Act.

(4) A prosecution shall not be instituted under this section without the consent of the Director of Public Prosecutions.

[Section 199 subsection (4) amended by 1999:8 s.2 & Sch 1 effective 1 April 1999; subsection (1) amended by 2006:26 s.2 & Sch effective 18 July 2006; Section 199 amended by 2019 : 36 s. 24 effective 1 November 2019]

Observations or recordings in breach of privacy

199A (1) A person who without lawful authority observes or visually records another person, in circumstances where a reasonable adult would expect to be afforded privacy—

(a) without the other person's consent; and

(b) when the other person—

(i) is in a private place; or

(ii) is engaging in a private act and the observation or visual recording is made for the purpose of observing or visually recording a private act,

commits an offence.

(2) A person who without lawful authority observes or visually records another person's genital or anal region, in circumstances where a reasonable adult would expect to be afforded privacy in relation to that region—

(a) without the other person's consent; and

(b) when the observation or visual recording is made for the purpose of observing or visually recording the other person's genital or anal region,

commits an offence.

(3) A person convicted of an offence under subsection (1) or (2) is liable—

(a) on summary conviction to a term of imprisonment not exceeding three years;

(b) on conviction on indictment to a term of imprisonment not exceeding five years.

[Section 199A inserted by 2021 : 20 s. 3 effective 15 June 2021]

Distributing intimate images

199B (1) A person who distributes an intimate image of another person—

(a) without the other person's consent; and

(b) in a way that would cause the other person distress reasonably arising in all the circumstances,

commits an offence.

(2) A person convicted of an offence under subsection (1) is liable—

(a) on summary conviction to a term of imprisonment not exceeding three years;

(b) on conviction on indictment to a term of imprisonment not exceeding five years.

(3) For subsection (1)(b), it is immaterial whether the person who distributes the intimate image intends to cause, or actually causes, the other person distress.

(4) A person shall not be convicted of an offence under this section if it is proved that the act in question that is alleged to constitute the offence is justified as being for the public good on the ground that it is in the interest of the administration of justice or science, medicine or education.

(5) Whether the act in question is justified as being for the public good is to be a question of fact.

[Section 199B inserted by 2021 : 20 s. 3 effective 15 June 2021]

Distributing prohibited visual recordings

199C (1) A person who distributes a prohibited visual recording of another person having reason to believe it to be a prohibited visual recording, without the other person's consent, commits an offence.

(2) A person convicted of an offence under subsection (1) is liable—

(a) on summary conviction to a term of imprisonment not exceeding three years;

(b) on conviction on indictment to a term of imprisonment not exceeding five years.

[Section 199C inserted by 2021 : 20 s. 3 effective 15 June 2021]

Threats to distribute intimate image or prohibited visual recording

199D (1) A person commits an offence if—

(a) the person makes a threat to another person to distribute an intimate image or prohibited visual recording of the other person—

(i) without the other person's consent;

(ii) in a way that would cause the other person distress reasonably arising in all the circumstances; and

(b) the threat is made in a way that would cause the other person fear, reasonably arising in all the circumstances, of the threat being carried out.

(2) A person commits an offence if—

(a) the person makes a threat to another person (person A) to distribute an intimate image or prohibited visual recording of another person (person B)—

(i) without person B's consent;

(ii) in a way that would cause either person A or person B distress reasonably arising in all the circumstances; and

(b) the threat is made in a way that would cause person A fear, reasonably arising in all the circumstances, of the threat being carried out.

(3) A person convicted of an offence under subsection (1) or (2) is liable—

(a) on summary conviction to a term of imprisonment not exceeding three years;

(b) on conviction on indictment to a term of imprisonment not exceeding five years.

(4) For subsections (1) and (2) it is immaterial whether—

(a) the intimate image or prohibited visual recording exists or does not exist; or

(b) the person who makes the threat intends to cause, or actually causes, the fear mentioned in the subsection.

[Section 199D inserted by 2021 : 20 s. 3 effective 15 June 2021]

Rectification order—offence against section 199A, 199B, 199C or 199D

199E (1) If a person is convicted of an offence against either section 199A, 199B, 199C or 199D, the court before which he is convicted may order the person to take reasonable action to remove, retract, recover, delete or destroy an intimate image or visual recording involved in the offence within a stated period.

(2) A person who fails to comply with an order made under subsection (1) commits an offence.

(3) A person convicted of an offence under subsection (2) is liable on summary conviction to a term of imprisonment not exceeding twelve months.

[Section 199E inserted by 2021 : 20 s. 3 effective 15 June 2021]

Indecent show etc

200 (1) Any person who, knowingly and without lawful in justification or excuse, exhibits any indecent show or performance in any public place, is guilty of an offence and is liable on summary conviction, for a first offence to a fine of $500 or to imprisonment for six months, and on conviction on indictment for a second or subsequent offence to a fine at the discretion of the court or to imprisonment for two years.

(2) It is a defence to a charge of any of the offences constituted by this section to prove that it was for the public benefit that the act complained of should be done.

(3) Whether the doing of any such act is or is not for the public benefit is declared to be a question of fact.

Racial harassment

200A (1) A person ("A") commits racial harassment of another person ("B") if—

(a) intending to cause B distress, fear or alarm; and

(b) being motivated by antipathy to B on account of B's race, colour or place of origin or A's perception of B's race, colour or place of origin,

A does, or attempts or threatens to do, in relation to B, an act specified in subsection (2).

(2) For the purpose of subsection (1), a person ("A") does in relation to another person ("B") an act referred to in that subsection if—

(a) A assaults B; or

(b) A makes a telephone call to B, whether or not a conversation with B ensues; or

(c) whether by mechanical or electronic means, or orally, or by any other means, A makes or causes to be made, a communication to B;

(d) A commits a trespass under section 329I involving a dwelling-house where B is or resides; or

(e) A damages, defaces or destroys any property of B.

(3) "To assault" in subsection (2) has the meaning assigned to it in section 233.

(4) Racial harassment of a person is a summary offence, and a person found guilty of it is liable to a fine of $5,000 or to imprisonment for one year or to both such fine and imprisonment.

[Section 200A inserted by 1995 : 44 effective 21 December 1995; and amended by 1998 : 27 effective 8 July 1998]

Racial intimidation

200B (1) A person ("A") commits racial intimidation of another person ("B") if—

(a) intending to cause B distress, fear or alarm; and

(b) being motivated by antipathy to B on account of B's association with any individual or body of persons (being an individual or a body of persons identified by A by reference to, or by reference to A's perception of, the race, colour or place of origin of that individual or those persons),

A does, or attempts or threatens to do, in relation to B, an act specified in subsection (2) of section 200A.

(2) Racial intimidation of a person is a summary offence, and a person found guilty of it is liable to a fine of $5,000 or to imprisonment for one year or to both such fine and imprisonment.

[Section 200B inserted by 1995 : 44 effective 21 December 1995]

PART XI

OFFENCES RELATING TO MARRIAGE AND TO PARENTAL RIGHTS AND DUTIES

Bigamy

201 (1) Any person who is married or in a domestic partnership and who purports to—

(a) marry any other person during the life of his spouse or domestic partner;

(b) marry any person whom he knows to be married or in a domestic partnership;

(c) enter into a domestic partnership with any other person during the life of his spouse or domestic partner;

(d) enter into a domestic partnership with any person whom he knows to be married or in a domestic partnership;

is liable on conviction by a court of summary jurisdiction to imprisonment for twelve months and on conviction on indictment to imprisonment for two years.

(2) This section does not extend—

(a) to any person whose marriage or domestic partnership with such husband, wife or domestic partner has been dissolved or declared void by a court of competent jurisdiction;

(b) to any person who contracts a marriage or enters into a domestic partnership during the life of a former husband, wife or domestic partner, if such husband, wife or domestic partner, at the time of the subsequent marriage or domestic partnership, has been absent from such person for the period of seven years, and has not been heard of by such person as being alive within that time.

(3) In this section, "domestic partner" and "domestic partnership" have the meanings given in the Domestic Partnership Act 2018.

(4) This section applies to a person in an overseas relationship treated as a domestic partnership in accordance with section 38 of that Act as it applies to a person in a domestic partnership.

[Section 201 repealed and replaced by 2018 : 1 s. 43 effective 1 June 2018]

Abducting child

202 (1) Any person who unlawfully takes any unmarried child out of the custody or protection of his father or mother or other person having the lawful care or charge of him, and against the will of his father or mother or of such other person, is guilty of a misdemeanour, and is liable on conviction by a court of summary jurisdiction to imprisonment for twelve months and on conviction on indictment to imprisonment for two years.

(2) It is immaterial that the offender believed the person taken to be of or above sixteen years of age.

(3) It is immaterial that the child was taken with his own consent or at his own suggestion.

[Section 202 amended by 2019 : 36 s. 25 effective 1 November 2019]

Taking away etc child under 14 years of age

203 (1) Any person who, with intent to deprive any parent, guardian or other person who has the lawful care or charge of a child under fourteen years of age, of the possession of such child, or with intent to steal any article upon or about the person of any such child,—

(a) forcibly or fraudulently takes or entices away or detains the child; or

(b) receives or harbours the child, knowing it to have been so taken or enticed away or detained,

is guilty of a felony, and is liable to imprisonment for four years.

(2) It is a defence to a charge of any of the offences constituted by this section to prove that the accused person claimed a right to the possession of the child.

[Section 203 amended by 2002:36 Sch para 6 effective 19 January 2004]

Deserting child under 14 years of age

204 Any person who, being the parent of a child under fourteen years of age, and being able to maintain such child, wilfully and without lawful or reasonable cause deserts the child and leaves it without means of support, is guilty of a summary offence, and is liable to imprisonment for twelve months.

PART XII

DEFAMATION

Interpretation and construction of Part XII

205 (1) In this Part "periodical" includes any newspaper, review, magazine or other writing or print published periodically.

(2) Any imputation concerning any person, or any member of his family, whether living or dead, by which the reputation of that person is likely to be injured, or by which he is likely to be injured in his profession, occupation or trade, or by which other persons are likely to be induced to shun, or avoid, or ridicule, or despise him, is called defamatory, and the matter of the imputation is called defamatory matter.

(3) An imputation may be expressed either directly or by insinuation or irony.

(4) Any person who, by spoken words or audible sounds, or by words intended to be read either by sight or touch, or by signs, signals, gestures, or visible representations,

publishes any defamatory imputation concerning any person is said to defame that person.

(5) Publication is, in the case of spoken words or audible sounds, the speaking of such words or the making of such sounds in the presence and hearing of any person other than the person defamed, and, in the case of signs, signals, or gestures, the making of such signs, signals, or gestures, so as to be seen or felt by, or otherwise come to the knowledge of, any person other than the person defamed, and, in the case of other defamatory matter, the exhibiting of it in public, or causing it to be read or seen, or showing or delivering it, or causing it to be shown or delivered, with view to its being read or seen by any person other than the person defamed.

Questions of fact and law with respect to defamation

206 (1) The question whether any matter is or is not defamatory is declared to be a question of fact.

(2) The question whether any matter alleged to be defamatory is or is not capable of bearing a defamatory meaning is declared to be a question of law.

(3) Whether any defamatory matter is or is not relevant to any other matter, and whether the public discussion of any subject is or is not for the public benefit, are declared to be questions of fact.

Publication of defamatory matter *prima facie* unlawful

207 It is unlawful to publish any defamatory matter unless such publication is protected, or justified, or excused, by law.

Absolute protection: proceedings in courts of justice and at inquiries

208 A person does not incur any liability as for defamation by publishing, in the course of a proceedings held before or under the authority of any court of justice, or in the course of an inquiry made under the authority of any court of justice, or in the course of an inquiry made under the authority of an Act or of an Act of the Parliament of the United Kingdom, or under the authority of Her Majesty, or of the Governor, any defamatory matter.

Absolute protection: reports of official inquiries

209 A person appointed under the authority of an Act or of an Act of the Parliament of the United Kingdom, or by or under the authority of Her Majesty, or of the Governor, to hold any inquiry, does not incur any liability as for defamation by publishing any defamatory matter in an official report made by him of the result of such inquiry.

Protection: reports of matter of public interest

210 (1) It is lawful to publish in good faith and for the information of the public—

(a) a fair report of the public proceedings of any court of justice, whether such proceedings are preliminary or interlocutory or final, or of the result of any such proceedings, unless, in the case of proceedings which are not

final, the publication has been prohibited by the court or a judge, or unless the matter published is blasphemous or obscene;

(b) a fair report of the proceedings of any inquiry held under the authority of an Act or of an Act of the Parliament of the United Kingdom, or by or under the authority of Her Majesty, or of the Governor or an extract from or abstract of any such proceedings, or a copy of, or extract from, or abstract of, an official report made by the person by whom the inquiry was held;

(c) at the request of any Government Department, public authority, public officer or police officer, any notice or report issued by such department, authority or officer for the information of the public;

(d) a fair report of the proceedings of any public authority or other persons duly constituted under the provisions of any Act or Act of the Parliament of the United Kingdom for the discharge of public functions, so far as the matter published relates to matters of public concern;

(e) a fair report of the proceedings of any public meeting, so far as the matter published relates to matters of public concern.

(2) A publication is said to be made in good faith for the information of the public if the person by whom it is made is not actuated in making it by ill-will to the person defamed, or by any other improper motive, and if the manner of the publication is such as is ordinarily and fairly used in the case of publication of news.

(3) In the case of a publication of a report of the proceedings of a public meeting in a periodical, it is evidence of want of good faith if the proprietor, publisher, or editor, has been requested by the person defamed to publish in the periodical a reasonable letter or statement by way of contradiction or explanation of the defamatory matter, and has refused or neglected to publish the same.

(4) "public meeting" includes any meeting lawfully held for a lawful purpose, and for the furtherance or discussion in good faith of a matter of public concern, or for the advocacy of the candidature of any person for a public office, whether the admission to the meeting was open or restricted.

Protection: fair comment

211 (1) It is lawful to publish a fair comment respecting—

(a) any of the matters with respect to which the publication of a fair report in good faith for the information of the public is by section 210 declared to be lawful;

(b) the public conduct of any person who takes part in public affairs, or respecting the character of any such person, so far as his character appears in that conduct;

(c) the conduct of any public officer or public servant in the discharge of his public functions, or respecting the character of any such person, so far as his character appears in that conduct;

(d) the merits of any case, civil or criminal, which has been decided by any court of justice, or respecting the conduct of any person as a judge, party, witness, counsel or officer of the court, in any such case, or respecting the character of any such person, so far as his character appears in that conduct;

(e) any published book or other literary production, or respecting the character of the author, so far as his character appears by such book or production;

(f) any composition or work of art, or performance publicly exhibited, or respecting the character of the author or performer or exhibitor, so far as his character appears from the matter exhibited;

(g) any public entertainment or sports, or respecting the character of any person conducting or taking part therein, so far as his character appears from the matter of the entertainment or sports, or the manner of conducting the same; or

(h) any communication made to the public on any subject.

(2) Whether a comment is or is not fair is declared to be a question of fact.

(3) If a comment is not fair, and is defamatory, the publication of the comment is unlawful.

Protection: truth

212 It is lawful to publish defamatory matter if the matter is true, and if it is for the public benefit that the publication complained of should be made.

Qualified protection: excuse

213 (1) It is a lawful excuse for the publication of defamatory matter if the publication is made in good faith—

(a) by a person having over another person any lawful authority in the course of a censure passed by him on the conduct of that other person in matters to which such lawful authority relates;

(b) for the purpose of seeking a remedy or redress for some private or public wrong or grievance from a person who has, or whom the person making the publication believes, on reasonable grounds, to have, authority over the person defamed with respect to the subject matter of such wrong or grievance;

(c) for the protection of the interests of the person making the publication, or of some other person, or for the public good;

(d) in answer to an inquiry made of the person making the publication relating to some subject as to which the person by whom or on whose behalf the inquiry is made has, or is believed, on reasonable grounds, by the person making the publication to have, an interest in knowing the truth;

(e) for the purpose of giving information to the person to whom it is made with respect to some subject as to which that person has, or is believed, on reasonable grounds, by the person making the publication to have, such an interest in knowing the truth as to make his conduct in making the publication reasonable under the circumstances;

(f) on the invitation or challenge of the person defamed;

(g) in order to answer or refute some other defamatory matter published by the person defamed concerning the person making the publication or some other person;

(h) in the course of, or for the purposes of, the discussion of some subject of public interest, the public discussion of which is for the public benefit, and if, so far as the defamatory matter consists of comment, the comment is fair.

(2) For the purposes of this section, a publication is said to be made in good faith if the matter published is relevant to matters the existence of which may excuse the publication in good faith of defamatory matter—

(a) if the manner and extent of the publication does not exceed what is reasonably sufficient for the occasion; and

(b) if the person by whom it is made is not actuated by ill-will to the person defamed, or by any other improper motive, and does not believe the defamatory matter to be untrue.

Unlawfully publishing defamatory matter

214 (1) Any person who unlawfully publishes any defamatory matter concerning another person is guilty of a summary offence, and is liable to imprisonment for twelve months.

(2) If the offender knows the defamatory matter to be false, he is liable on conviction on indictment to imprisonment for two years.

Publishing or threatening to publish defamatory matter with intent to extort property etc

215 Any person who publishes, or directly or indirectly threatens to publish, or directly or indirectly proposes to abstain from publishing, or directly or indirectly offers to prevent the publication of, any defamatory matter concerning another person, with intent to extort any property from such person or any other person, or with intent to induce any per-son to give or confer or procure, or to attempt to procure, to, upon, or for, any person

any property or benefit of any kind, is guilty of a misdemeanour, and is liable to imprisonment for three years.

Defence in case defamation by words, sounds, signs, signals or gestures

216 In any case other than that of words to be read, it is a defence to a prosecution for publishing defamatory matter to prove that the publication was made on an occasion and under circumstances when the person defamed was not likely to be injured thereby.

Liability of proprietor, publisher and editor of periodical

217 (1) Upon a charge against a proprietor, publisher or editor, of a periodical, of the unlawful publication in the periodical of defamatory matter, it is a defence to prove that the matter complained of was inserted in the periodical without his knowledge, and without negligence on his part.

(2) General authority given to the person who actually inserted the defamatory matter to manage or conduct the periodical as editor or otherwise, and to insert therein what in his discretion he thinks fit, is declared not to be negligence within the meaning of this section, unless it is proved that the proprietor, or publisher, or editor, when giving such general authority, meant that it should extend to and authorize the unlawful publication of a defamatory matter, or continued such general authority, knowing that it had been exercised by unlawfully publishing defamatory matter in any number or part of the periodical.

Protection of innocent seller of periodicals, books etc

218 (1) A person is not criminally responsible as for the unlawful publication of defamatory matter merely by reason of selling any number or part of a periodical containing the defamatory matter, unless he knows that such number or part contains the defamatory matter, or that defamatory matter is habitually or frequently contained in that periodical.

(2) A person is not criminally responsible as for the unlawful publication of defamatory matter merely by reason of selling a book, pamphlet, print or writing, or other thing not forming part of a periodical, although it contains the defamatory matter, if at the time of sale he does not know that the defamatory matter is contained therein.

Protection of employers

219 An employer is not responsible as for the unlawful publication of defamatory matter merely by reason of the sale by his servant of a book, pamphlet, print, writing or other thing, whether a periodical or not, containing the defamatory matter, unless it is proved that he authorized the sale, knowing that the book, pamphlet, print, writing or other thing, contained the defamatory matter, or, in the case of a number or part of a periodical, that defamatory matter was habitually or frequently contained in that periodical.

Proof of knowledge

220 When any question arises, under section 217, 218 or 219, whether the publication of any defamatory matter was or was not made with the knowledge of the

accused person, then the burden of proof of the absence of knowledge lies upon the accused person.

Proof of good faith

221 When any question arises whether a publication of defamatory matter was or was not made in good faith, and it appears that the publication was made under circumstances which would afford lawful excuse for the publication if it was made in good faith, then the burden of proof of the absence of good faith lies upon the party alleging such absence.

Prosecution of newspapers to be by sanction of a judge after notice

222 No criminal prosecution shall be commenced against the proprietor, or publisher, or editor, or any person responsible for the publication of, any periodical, for the unlawful publication of any defamatory matter contained therein, except by order of a judge made after notice to the person accused, and after that person has had an opportunity of being heard in opposition to the application for the order.

PART XIII

OFFENCES RELATING TO THE POSSESSION AND USE OF EXPLOSIVES ETC

Preparation to commit offences with explosives etc

223 (1) Any person who makes or knowingly has in his possession any explosive substance, or any dangerous or noxious engine, instrument or thing whatsoever, with intent by means thereof to commit, or for the purpose of enabling any other person by means thereof to commit, any indictable offence, is guilty of a misdemeanour, and is liable to imprisonment for three years.

(2) An offender may be arrested without warrant by a police officer.

Endangering life etc by explosives

224 Any person who, by the explosion of any explosive substance, wilfully and unlawfully destroys or damages—

(a) any building or vessel with intent to cause the death of any person, or whereby the life of any person is endangered; or

(b) any dwelling-house or vessel, any person being therein,

is guilty of a felony, and is liable to imprisonment for a term not exceeding twenty years.

Causing bodily injury by explosion

225 Any person who, by the unlawful and wilful explosion of any explosive substance, burns, maims, disfigures, disables, or does any grievous bodily harm to, any person, is guilty of a felony and is liable to imprisonment for seven years.

Placing explosive substance with intent to harm

226 Any person who unlawfully, and with intent to do any harm to another person, puts any explosive substance in any place whatsoever, is guilty of a felony and is liable to imprisonment for seven years.

Placing explosive substance with intent to destroy or damage property

227 Any person who unlawfully and with intent to destroy or damage any property, puts any explosive substance in any place whatsoever, is guilty of a felony and is liable to imprisonment for ten years.

Making and possession of petrol bombs etc

228 Any person who makes, or has in his possession, any apparatus, instrument, article or thing which—

(a) contains any inflammable liquid or substance; or

(b) is constructed or adapted for use in conjunction with any such liquid or substance so as to cause injury or loss of life to any person or damage to any property,

under such circumstances as to give rise to a reasonable suspicion that he is not making it or does not have it in his possession for a lawful object is, unless he can show that he made it or had it in his possession for a lawful object, guilty of an offence and is liable on summary conviction to imprisonment for two years and on conviction on indictment to imprisonment for five years.

Use of petrol bombs etc

229 Any person who, with intent to cause the destruction of or damage to property of another or in which another has an interest, or to cause personal injury to another, or to give another reasonable cause to fear any destruction of property or personal injury or, being reckless in regard to causing any such destruction, damage, injury or fear, throws, places, attaches or otherwise makes use of any such apparatus, instrument, article or thing as is mentioned in section 228 is guilty of an offence and is liable on summary conviction to imprisonment for one year and on conviction on indictment to imprisonment for ten years.

PART XIV

CONSPIRACY

Conspiring to commit offence

230 (1) Subject to subsection (2), every one who conspires with any other person to commit any offence (in this section referred to as "the principal offence") is guilty of an offence which shall be triable either summarily or on indictment in the manner of the principal offence, and the person committing such offence is liable to—

(a) imprisonment for half the term, if any, prescribed by law for the principal offence; and additionally or alternatively

(b) imprisonment for ten years where the penalty prescribed for the principal offence is life imprisonment; and additionally or alternatively

(c) a fine in an amount not exceeding half the amount, if any, prescribed by law for the principal offence; and additionally or alternatively

(d) subject to paragraphs (a) and (c) to the penalty prescribed by law for the principal offence.

(2) This section shall not apply where a punishment for the conspiracy is otherwise expressly prescribed by this Act or other statutory provision.

(3) Where the principal offence is one for which the offender may be arrested without warrant generally or without warrant subject to certain conditions then, for the purposes of Part XXIV, conspiracy to commit that offence shall be deemed to be an offence for which the offender may be arrested without warrant generally or, as the case may be, without warrant subject to such conditions.

Conspiring to commit offence outside Bermuda

231 (1) Every one who conspires with any other person to do or omit to do in any part of the world outside Bermuda anything of which the doing or omission in Bermuda would be an offence (in this section referred to as "the principal offence") shall be guilty of an offence which shall be triable either summarily or on indictment in the manner of the principal offence, and the person committing such offence is liable to—

(a) imprisonment for a term not exceeding half the term, if any, prescribed by law in Bermuda for the principal offence; and additionally or alternatively

(b) imprisonment for ten years where the penalty prescribed for the principal offence is life imprisonment; and additionally or alternatively

(c) a fine in an amount not exceeding half the amount, if any, prescribed by law in Bermuda for the principal offence; and additionally or alternatively

(d) subject to paragraphs (a) and (c), to the penalty prescribed by law in Bermuda for the principal offence.

(2) Where any one is charged with contravening this section, it is a defence to prove that the doing or omission of the act to which the conspiracy relates was not an offence under the law of the place where it was, or was to be, done or omitted.

(3) Where the principal offence is one for which the offender may be arrested without warrant generally or without warrant subject to certain conditions then, for the purposes of Part XXIV, conspiracy to commit that offence shall be deemed to be an offence for which the offender may be arrested without warrant generally or, as the case may be, without warrant subject to such conditions.

Other conspiracies

232 Every person who conspires with another person to effect any of the following purposes—

(a) to prevent or defeat the execution or enforcement of any Act, Act of the Parliament of the United Kingdom or Order made by Her Majesty-in-Council; or

(b) to cause any injury to the person or reputation of any person, or to depreciate the value of any property of any person; or

(c) to prevent or obstruct the free and lawful disposition of any property by the owner thereof for its fair value; or

(d) to injure any person in his trade or profession; or

(e) to prevent or obstruct, by means of any act or acts which if done by an individual person would constitute an offence on his part, the free and lawful exercise by any person of his trade, profession or occupation; or

(f) to effect any unlawful purpose; or

(g) to effect any lawful purpose by any unlawful means,

is guilty of a summary offence, and is liable to imprisonment for twelve months.

DIVISION III

OFFENCES AGAINST THE PERSON

PART XV

PROVISIONS OF LAW RELATING TO VIOLENCE TO THE PERSON AND TO THE PRESERVATION OF HUMAN LIFE

Preliminary

Interpretation of Part XV

233 (1) A person who—

(a) strikes, touches, or moves, or otherwise applies force of any kind to, the person of another, either directly or indirectly, without that other's consent; or

(b) by any bodily act or gesture attempts or threatens to apply force of any kind to the person of another without that other's consent, under such circumstances that the person making the attempt or threat has actually or apparently a present ability to effect his purpose,

is said to assault that other, and the act is called an assault.

(2) "applies force" includes the case of applying heat, light, electrical energy, gas, odour, or any other substance or thing whatsoever, if applied in such a degree as to cause injury or personal discomfort.

(3) For the purposes of subsection (1), there is no consent—

(a) where the complainant submits to conduct alleged to be an assault or does not resist that conduct by reason of—

(i) the application of force to the complainant or to a person other than the complainant; or

(ii) threats or fear of the application of force to the complainant or to a person other than the complainant; or

(iii) fraud; or

(b) where—

(i) the complainant expresses, by words or conduct, a lack of agreement to engage in the activity; or

(ii) the complainant, having consented to engage in the activity, expresses, by words or conduct, a lack of agreement to continue to engage in the activity; or

(iii) any agreement is expressed by the words or conduct of a person other than the complainant; or

(iv) the accused induces the complainant to engage in the activity by abusing a position of trust, power or authority; or

(v) the complainant is incapable of consenting to the activity.

(4) Nothing in subsection (3) shall be construed as limiting the circumstances in which no consent is obtained.

(5) In relation to an assault, where an accused alleges that he believed that the complainant consented to the conduct alleged to be the assault, the judge, if satisfied—

(a) that there is sufficient evidence; and

(b) that the evidence, if believed by the jury, would constitute a defence,

shall instruct the jury that they must, when reviewing all the evidence relating to the determination of the honesty of the accused's belief, consider the presence or absence of reasonable grounds for that belief.

(6) The expression "assault" in this section applies to—

(a) a sexual assault; and

(b) an act of a kind described in subsection (1) or (2) of section 325 or in subsection (1) of section 326; and

(c) any other form of assault.

[Section 233 amended by 1993 : 2 effective 1 June 1993]

General declaration regarding assaults

Assaults unlawful

234 (1) An assault is unlawful, and constitutes an offence, unless it is authorized or justified or excused by law.

(2) The application of force by one person to the person of another may be unlawful, although it is done with the consent of that other person.

Authorization of assault in execution of process

Authorization of person executing sentence, process etc

235 (1) It is lawful for a person who is required under any provision of law to perform the duty of executing or giving effect to the lawful sentence of a court to execute or give effect to that sentence.

(2) It is lawful for a person who is required under any provision of law to perform the duty of executing the lawful process of a court, and who is required to arrest or detain another person under such process, and for every person lawfully assisting a person so required, to arrest or detain that other person according to the terms of the process.

(3) It is lawful for a person who is required under any provision of law to perform the duty of executing a lawful warrant issued by any court or other person having jurisdiction to issue it, and who is required to arrest or detain another person under such warrant, and for every person lawfully assisting a person so required, to arrest or detain that other person according to the directions of the warrant.

[Section 235 subsection (3) amended by 2010 : 30 s. 7 effective 11 June 2010]

Erroneous sentence or process or warrant

236 If the sentence was passed, or the process was issued, by a court having jurisdiction under any circumstances to pass such a sentence or to issue such process, or if the warrant was issued by a court or other person having authority under any circumstances to issue such a warrant, it is immaterial whether the court or person had or had not authority to pass the sentence or issue the process or warrant in the particular case, unless the person executing the sentence, process or warrant knows that the sentence or process or warrant was in fact passed or issued without authority.

[Section 236 amended by 2010 : 30 s. 7 effective 11 June 2010]

Sentence, process or warrant without jurisdiction

237 A person who executes or assists in executing any sentence, process, or warrant, which purports to be passed or issued by a court, Justice of the Peace, or other person, and who would be justified, under section 235 or 236, in executing the sentence, process

or warrant if it had been passed or issued by a court or Justice of the Peace, or person, having authority to pass or issue it, is not criminally responsible for any act done in such execution, notwithstanding that the court, Justice of the Peace, or person, had no authority to pass the sentence or issue the process or warrant, if in such execution he acted in good faith and in the belief that the sentence, process, or warrant was that of a court, Justice of the Peace, or other person, having such authority.

Arrest of wrong person

238 (1) A person who, being duly authorized to execute a warrant to arrest one person, arrests another person, believing in good faith and on reasonable grounds that the person arrested is the person named in the warrant, is not criminally responsible for doing so to any greater extent than if the person arrested had been the person named in the warrant.

(2) Any person who lawfully assists in making such an arrest, believing that the person arrested is the person named in the warrant, or who, being required by the warrant to receive and detain the person named in it, receives and detains the person so arrested, is not criminally responsible for doing so to any greater extent than if the person arrested had been the person named in the warrant.

Execution of irregular process or warrant

239 When any process or warrant is defective in law by reason of some defect in substance or in form apparent on the face of it, a person who, in good faith and believing that it is effective in law, acts in the execution of the process or warrant, is not criminally responsible for anything done in such execution to any greater extent than if the process or warrant were effective in law.

240 *[Repealed]*

[Section 240 repealed by 2006:1 s.102 & Sch 4 effective 8 September 2008]

241 *[Repealed]*

[Section 241 repealed by 2006:1 s.102 & Sch 4 effective 7 September 2009]

Use of force in connection with arrest

242 *[Repealed]*

[Section 242(2) amended by 1999:51 s.4 & Sch effective 23 December 1999; section 242 repealed by 2006:1 s.102 & Sch 4 effective 8 September 2008]

243 *[Repealed]*

[Section 243 repealed by 2006:1 s.102 & Sch 4 effective 8 September 2008]

Use of force in preventing escape or rescue after arrest

244 (1) When any person has lawfully arrested another person for any offence, it is lawful for him to use such force as he believes, on reasonable grounds, to be necessary to prevent the escape or rescue of the person arrested.

(2) If the offence is not one which is such that the offender may be arrested without warrant, the foregoing provisions of this section shall not have effect so as to authorize the use of force which is intended or is likely to cause death or grievous bodily harm.

Examination of persons in custody

Examination of person of accused person in custody

245 (1) When a person is in lawful custody it is lawful for a police officer to search his person, and to take from him anything found upon his person, and to use such force as is reasonably necessary for that purpose.

(2) When a person is in lawful custody and there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of an offence, it is lawful for a medical practitioner, acting at the request of a police officer, and for any person acting in good faith in aid and under the direction of such medical practitioner, to make such an examination of the person so in custody as is reasonably necessary in order to ascertain the facts which may afford such evidence, and to use such force as is reasonably necessary for that purpose.

Prevention of breaches of the peace

Preventing breach of the peace

246 (1) It is lawful for any person who witnesses a breach of the peace to interfere to prevent the continuance or renewal of such breach, and to use such force as is reasonably necessary for such prevention and is reasonably proportioned to the danger to be apprehended from such continuance or renewal, and to detain any person who is committing or who is about to join in or to renew the breach of the peace for such time as may be reasonably necessary in order to give him into the custody of a police officer.

(2) It is lawful for a police officer who witnesses a breach of the peace, and for any person lawfully assisting him, to arrest any person whom he finds committing such breach, or whom he believes, on reasonable grounds, to be about to join in or renew the breach of the peace.

(3) It is lawful for a police officer to receive into custody and detain in custody any person given into his charge as having been a party to a breach of the peace by a person whom the police officer believes, on reasonable grounds to have witnessed the breach of the peace, and, upon receiving such person in custody the police officer shall be deemed to have arrested such person, and the provisions of sections 461, 461A, 461B and 462 shall apply accordingly.

(4) Nothing in this section shall authorize the detention in custody of any person save upon reasonable suspicion that he has committed, is committing or is about to commit an offence under any provision of law.

Suppression of riot

Suppression of riot

247 It is lawful for any person to use such force as is necessary to suppress a riot, and is reasonably proportioned to the danger to be apprehended from the continuance of the riot, even though such force may cause death or grievous bodily harm.

Suppression of riot by Justice or police officer

248 It is lawful for a Justice of the Peace to use or order to be used, and for a police officer to use, such force as he believes, on reasonable grounds, to be necessary in order to suppress a riot, and as is reasonably proportioned to the danger which he believes, on reasonable grounds, is to be apprehended from the continuance of the riot.

Suppression of riot by person acting under order of Justice

249 (1) It is lawful for any person acting in good faith in obedience to orders, not manifestly unlawful, given by a Justice of the Peace for the suppression of a riot, to use such force as he believes, on reasonable grounds, to be necessary for carrying such orders into effect.

(2) Whether any particular order so given is or is not manifestly unlawful is declared to be a question of law.

Suppression of riot by person subject to military law or police officer acting under orders of superior officer

250 (1) It is lawful for a person who is subject to military law to obey lawful commands of his superior officer, or for any police officer, to obey a command given him by his superior officer, with a view to the suppression of a riot, unless the command is manifestly unlawful.

(2) Whether any particular command is or is not manifestly unlawful is declared to be a question of law.

(3) In this section "military law" means any provision of the Acts of the Parliament of the United Kingdom entitled, respectively, the Naval Discipline Act, the Army Act or the Air Force Act or the Acts of the Legislature of Bermuda entitled the Defence Act 1965 [*title 7 item 21*].

[Section 250 subsection (3) amended by 2015 : 48 s. 26 effective 1 November 2017]

Suppression of riot by person acting without order in case of emergency

251 (1) When any person, whether subject to military law or not believes, on reasonable grounds, that serious mischief will arise from a riot before there is time to procure the intervention of a Justice of the Peace, it is lawful for him to use such force as he believes, on reasonable grounds, to be necessary for the suppression of the riot, and is

reasonably proportioned to the danger which he believes, on reasonable grounds, to be apprehended from the continuance of the riot.

(2) In this section "military law" means any provision of the Acts of the Parliament of the United Kingdom entitled, respectively, the Naval Discipline Act, the Army Act or the Air Force Act or the Acts of the Legislature of Bermuda entitled the Defence Act 1965 [*title 7 item 21*].

[Section 251 subsection (2) amended by 2015 : 48 s. 26 effective 1 November 2017]

Prevention of commission of offences etc

252 *[Repealed]*

[Section 252 repealed by 2006:1 s.102 & Sch 4 effective 8 September 2008]

Defence of dwelling-house

253 It is lawful for any person who is in peaceable possession of a dwelling-house, and for any person lawfully assisting him or acting by his authority, to use such force as he believes, on reasonable grounds, to be necessary in order to prevent the forcible breaking and entering of the dwelling-house, either by night or day, by any person whom he believes, on reasonable grounds, to be attempting to break and enter the dwelling-house with intent to commit any indictable offence therein.

Provisions of law relating to provocation

Provocation

254 (1) "provocation", in relation to an offence of which an assault is an element, means, except as hereinafter provided, any wrongful act or insult of such a nature as to be likely, when done to an ordinary person, or in the presence of an ordinary person to another person who is under his immediate care, or to whom he stands in a conjugal, parental, filial, or fraternal, relation, or in the relation of master or servant, to deprive him of the power of self-control, and to induce him to assault the person by whom the act or insult is done or offered.

(2) When such an act or insult is done or offered by one person to another, or in the presence of another to a person who is under the immediate care of that other, or to whom the latter stands in any such relation as aforesaid, the former is said to give to the latter provocation for an assault.

(3) A lawful act is not provocation to any person for an assault.

(4) An act which a person does in consequence of incitement given by another person in order to induce him to do the act, and thereby to furnish an excuse for committing an assault, is not provocation to that other person for an assault.

(5) An arrest which is unlawful is not necessarily provocation for an assault, but it may be evidence of provocation to a person who knows of the illegality.

Defence of provocation

255 (1) A person is not criminally responsible for an assault committed upon a person who gives him provocation for the assault, if he is in fact deprived by the provocation of the power of self control, and acts upon it on the sudden and before there is time for his passion to cool:

Provided that the force used is not disproportionate to the provocation, and is not intended, and is not such as is likely, to cause death or grievous bodily harm.

(2) For the purposes of this section the following questions are declared to be questions of fact, that is say,—

(a) whether any particular act or insult is such as is likely to deprive an ordinary person of the power of self control and to induce him to assault the person by whom the act or insult is done or offered; and

(b) whether, in any particular case,—

(i) the person provoked was actually deprived by the provocation of the power of self control; and

(ii) the force used was or was not disproportionate to the provocation; and

(iii) the force used was or was not intended, or was such as to be likely, to cause death or grievous bodily harm; and

(iv) the person provoked acted upon the provocation on the sudden and before there was time for his passion to cool.

Prevention of repetition of insult

256 It is lawful for any person to use such force as is reasonably necessary to prevent the repetition of an act or insult of such a nature as to be provocation to him for an assault, if the force used is not intended, and is not such as is likely, to cause death or grievous bodily harm.

Provisions of law relating to self-defence

Self-defence against unprovoked assault

257 (1) When a person is unlawfully assaulted, and has not provoked the assault, it is lawful for him to use such force to the assailant as is reasonably necessary to make effectual defence against the assault, if the force used is not intended, and is not such as is likely, to cause death or grievous bodily harm.

(2) If the nature of the assault is such as to cause reasonable apprehension of death or grievous bodily harm, and the person using force by way of defence believes, on reasonable grounds, that he cannot otherwise preserve the person defended from death or grievous bodily harm, it is lawful for him to use any such force to the assailant as is necessary for defence, even though such force may cause death or grievous bodily harm.

Self-defence against provoked assault

258 When a person has unlawfully assaulted another or has provoked an assault from another, and that other assaults him with such violence as to cause reasonable apprehension of death or grievous bodily harm, and to induce him to believe, on reasonable grounds, that it is necessary for his preservation from death or grievous bodily harm to use force in self-defence, he is not criminally responsible for using any such force as is reasonably necessary for such preservation, although such force may cause death or grievous bodily harm:

Provided that the foregoing provisions of this section shall not have effect so as to excuse or justify—

(a) the use by any person of force which causes death or grievous bodily harm where such person first began the assault with intent to kill or to do grievous bodily harm to some other person; or

(b) the use by any person of force which causes death or grievous bodily harm where such person endeavoured to kill or cause grievous bodily harm to some other person before the necessity of so preserving himself arose; or

(c) the use by any person of force which causes death or grievous bodily harm where such person has not before the necessity to use such force arose declined and quitted conflict or retreated from conflict as far as was practicable.

Aiding in self-defence

259 Where it is lawful for any person to use force in any degree for the purpose of defending himself against an assault, it is lawful for any other person acting in good faith in his aid to use a like degree of force for the purpose of defending such first mentioned person.

Defence of property

Defence of movable property against trespasser

260 It is lawful for any person who is in peaceable possession of any moveable property, and for any person acting by his authority, to use such force as is reasonably necessary in order to resist the taking of such property by a trespasser, or in order to retake it from a trespasser:

Provided that the foregoing provisions of this section shall not extend so as to authorize or justify the doing of any bodily harm to a trespasser.

Defence of moveable property under claim of right

261 When a person is in peaceable possession of any moveable property under a claim of right, it is lawful for him, and for any person acting by his authority, to use such force as is reasonably necessary in order to defend his possession of the property, even against

a person who is entitled by law to possession of the property, if he does not do bodily harm to such other person.

Defence of moveable property without claim of right

262 When a person who is entitled by law to the possession of moveable property attempts to take from a person who is in possession of the property, but who neither claims right to it, nor acts by the authority of a person who claims right, and the person in possession resists him, it is lawful for the person so entitled to possession to use force in order to obtain possession of the property, if he does not do bodily harm to the person in possession.

Defence of premises against trespassers; removal of disorderly persons

263 (1) It is lawful for a person who is in peaceable possession of any land, structure, vessel, or place, or who is entitled to the control or management of any land, structure, vessel, or place, and for any person acting by his authority, to use such force as is reasonably necessary in order to prevent any person from wrongfully entering upon such land, structure, vessel, or place, or in order to remove therefrom a person who wrongfully remains therein, if he does not do bodily harm to such person,

(2) It is lawful for a person who is in peaceable possession of any land, structure, vessel, or place, or who is entitled to the control or management of any land, structure, vessel, or place, and for any person acting by his authority, to use force in order to remove therefrom any person who conducts himself in a disorderly manner therein, if he does not do him bodily harm.

(3) In this section "place" includes any part of an enclosure or structure, whether separated from the rest of the enclosure or structure by a partition, fence, rope, or any other means, or not.

Defence of possession of real property or vessel under claim of right

264 When a person is in peaceable possession of any land, structure, or vessel, under a claim of right, it is lawful for him, and for any person acting by his authority, to use such force as is reasonably necessary in order to defend his possession, even against a person who is entitled by law to the possession of the property:

Provided that the foregoing provisions of this section shall not have effect so as to authorize or justify the doing of bodily harm.

Exercise of right of way or easement

265 When a person who is lawfully entitled to enter upon land for the exercise of a right of way or other easement or profit enters upon the land for the purpose of exercising such right of way, easement, or profit, after notice that his right to use such way, or easement, or to take such profit, is disputed by the person in possession of the land, or having entered persists in his entry after such notice, it is lawful for the person in possession, and for any person acting by his authority, to use such force as is reasonably necessary for the purpose of making the person so entering desist from the entry, if he does not do him bodily harm.

Maintenance of discipline

Domestic and school discipline

266 It is lawful for a parent, or a person in the place of a parent, or for a schoolmaster or master, to use, by way of correction towards a child, pupil, or apprentice, under his care, such force as is reasonable under the circumstances.

Discipline of ship

267 It is lawful for the master or other person in command of a vessel on a voyage to use such force as he believes, on reasonable grounds, to be necessary, and as is reasonable under the circumstances, for the purpose of maintaining discipline on board the vessel.

Surgical operations

Surgical operations

268 A person is not criminally responsible for performing in good faith and with reasonable care and skill a surgical operation upon any person for his benefit, or upon an unborn child for the preservation of the mother's life, if the performance of the operation is reasonable having regard to the patient's state at the time and to all the circumstances of the case.

Criminal responsibility for use of force

Use of excessive force

269 Any person authorized by law to use force is criminally responsible for any excess, according to the nature and quality of the act which constitutes the excess.

Consent to death immaterial

270 Consent by a person to the causing of his own death does not affect the criminal responsibility of any person by whom such death is caused.

Duty to provide necessaries

Duty to provide necessaries

271 It is the duty of every person having charge of another person who is unable, by reason of age, sickness, unsoundness of mind, detention, or any other cause, to withdraw himself from such charge, and who is unable to provide himself with the necessaries of life, whether the charge is undertaken under a contract, or is imposed by law, or arises by reason of any act, whether lawful or unlawful, of the person who has such charge, to provide for that other person the necessaries of life; and he is deemed to have caused any consequences which result to the life or health of the other person by reason of any omission to perform that duty.

Duty of head of family to provide necessaries for children

272 It is the duty of every person who, as head of a family, has charge of a child under the age of fourteen years, being a member of his household, to provide the necessaries of life for such child; and he or she is deemed to have caused any consequences which result to the life or health of the child by reason of any omission to perform that duty, whether the child is helpless or not.

Duty of masters to provide food for servants

273 It is the duty of every person who as a master or mistress has contracted to provide necessary food, clothing, or lodging, for any servant or apprentice under the age of sixteen years, to provide such food, clothing or lodging; and he or she is deemed to have caused any consequences which result to the life or health of the servant or apprentice, by reason of any omission to perform that duty,

Duty to take care in respect of dangerous acts

Duty of persons undertaking medical treatment and doing dangerous acts

274 It is the duty of every person who, except in a case of necessity, undertakes to administer surgical or medical treatment to any other person, or to do any other lawful act which is or maybe dangerous to human life or health, to have reasonable skill and to use reasonable care in doing such act; and he is deemed to have caused any consequences which result to the life or health of any person by reason of any omission to observe or perform that duty.

Duty of persons in charge of dangerous things

275 It is the duty of every person who has in his charge or under his control anything, whether living or inanimate, and whether moving or stationary, of such a nature that, in the absence of care or precaution in its use or management, the life, safety, or health, of any person may be endangered, to use reasonable care and take reasonable precautions to avoid such danger; and he is deemed to have caused any consequences which result to the life or health of any person by reason of any omission to perform that duty.

Duty to do certain acts where omission dangerous

276 When a person undertakes to do any act the omission to do which is or may be dangerous to human life or health, it is his duty to do that act; and he is deemed to have caused any consequences which result to the life or health of any person by reason of any omission to perform that duty.

Causing death by reckless or dangerous driving of a powercraft

276A (1) Any person who causes the death of another person by the driving of a powercraft within the territorial waters of Bermuda-

(a) in a reckless manner; or

(b) in a manner dangerous to other users of such waters,

is guilty of an offence and is liable upon conviction on indictment to imprisonment for two years.

(2) Upon the trial of a person who is indicted for manslaughter in connection with the driving of a powercraft by him, it shall be lawful for the jury if they are satisfied that such person though not guilty of manslaughter is guilty of an offence under this section, to find him guilty of that offence; and the Court may impose a sentence or make an order under this Part in respect of an offence under this section.

Causing injury or damage by powercraft

276B (1) Any person who causes injury to another, or damages property of another by the driving of a powercraft within the territorial waters of Bermuda-

(a) in a reckless manner; or

(b) in a manner dangerous to other users of such waters,

is guilty of an offence and is liable on conviction on indictment to imprisonment for eighteen months.

(2) For purposes of this section and section 276A "powercraft" means any type of craft being propelled by any form of machinery whether or not such machinery is the principal method of propulsion.

PART XVI

HOMICIDE, SUICIDE AND OFFENCES RELATING TO CHILDBIRTH

General provisions relating to homicide

Killing of a human being unlawful

277 It is unlawful to kill any person unless such killing is authorized or justified or excused by law.

Time at which child becomes a person capable of being killed

278 A child becomes a person capable of being killed when it has wholly proceeded in a living state from the body of its mother, and is breathing through its own lungs, and has an independent circulation, whether the navel string is severed or not.

Definition of killing

279 Except as hereinafter provided, any person who causes the death of another person, directly or indirectly, by any means whatsoever is deemed to have killed that other person.

Death by act etc done at childbirth

280 When a child dies in consequence of an act done or omission made by any person before or during its birth, the person who did such act or made such omission is deemed to have killed the child.

Causing death by threats

281 A person who, by threats or intimidation of any kind, or by deceit, causes another person to do an act or make an omission which results in the death of that other person, is deemed to have killed that other person.

Acceleration of death

282 A person who does any act or makes any omission which hastens the death of another person who, when the act is done or the omission is made, is labouring under some disorder, injury or disease arising from another cause, is deemed to have killed that other person.

Immaterial that injury might have been avoided

283 When a person causes a bodily injury to another person from which death results, it is immaterial that the injury might have been avoided by proper precaution on the part of the person injured, or that his death from that injury might have been prevented by proper care or treatment.

Injury causing death in consequence of subsequent treatment

284 When a person does grievous bodily harm to another person, and such other person has recourse to surgical or medical treatment, and death results either from the injury or the treatment, he is deemed to have killed that other person, although the immediate cause of death was the surgical or medical treatment, if the treatment was reasonably proper under the circumstances, and was applied in good faith.

Limitation as to time of death

285 (1) A person is not deemed to have killed another person if the death of that other person does not take place within a year and a day of the doing of the act or the making of the omission which act or omission caused the death.

(2) Such period is reckoned inclusive of the day on which the last unlawful act contributing to the cause of death was done.

(3) When the cause of death is an omission to observe or perform a duty, the period is reckoned inclusive of the day on which the omission ceased.

(4) When the cause of death is in part an unlawful act, and in part an omission to observe or perform a duty, the period is reckoned inclusive of the day on which the last unlawful act was done or the day on which the omission ceased, whichever is the later.

Offences constituted by homicide

Offences constituted by unlawful homicide

286 Any person who unlawfully kills another person is guilty of a felony which is called murder or manslaughter or infanticide according to the circumstances of the case.

[Section 286 amended by 2014 : 14 s. 4 effective 19 September 2014]

Premeditated murder

286A *[Repealed by 2014 : 14]*

[Section 286A repealed by 2014 : 14 s. 4 effective 19 September 2014]

Premeditation

286B *[Repealed by 2014 : 14]*

[Section 286B repealed by 2014 : 14 s. 4 effective 19 September 2014]

Murder

Constitution of offence of murder

287 (1) Except as hereinafter provided, a person who unlawfully kills another person under any of the following circumstances is guilty of murder, that is to say,—

(a) if the offender intends to cause the death of the person killed, or that of some other person;

(b) if the offender intends to do to the person killed or to some other person some grievous bodily harm;

(c) if the offender causes death by means of an act done or omission made in the prosecution of an unlawful purpose, which act or omission is of such a nature as to be likely to endanger human life;

(d) if the offender intends to do grievous bodily harm to some person for the purpose of facilitating the commission of an offence which is such that the offender may be arrested without warrant, or for the purpose of facilitating the flight of an offender who has committed or attempted to commit any such offence;

(e) if the offender causes death by administering any stupefying or overpowering thing for either of the purposes last aforesaid; or

(f) if the offender causes death by wilfully stopping the breath of any person for either of such purposes.

(2) In the circumstances set out in paragraph (b) of subsection (1) it is immaterial that the offender did not intend to hurt the particular person who is killed.

(3) In the circumstances set out in paragraph (c) of subsection (1) it is immaterial that the offender did not intend to hurt any person.

(4) In the circumstances set out in paragraphs (d), (e) and (f) of subsection (1) it is immaterial that the offender did not intend to cause death or did not know that death was likely to result.

Punishment of murder; alternative verdict

288 (1) Any person who commits the offence of murder shall be sentenced to imprisonment for life.

(1A) Where a person is sentenced under this section, the court shall, having regard—

(a) to the circumstances of the commission of the offence; and

(b) the character and circumstances of the offender,

order the portion of the sentence that must be served before any application for release on licence may be entertained or granted by the Parole Board (established under the Parole Board Act 2001).

(2) Where any person is charged upon indictment with the offence of murder, he may be convicted of manslaughter if any such offence is established by the evidence, but not, except as herein provided, of any offence other than that with which he is charged; and a person convicted under this subsection is liable to the same punishment as if he had been convicted on an indictment charging him with the offence of which he is actually convicted.

(3) Upon an indictment charging a person with the murder of any other person, if upon the evidence it appears that the person alleged to have been killed was a child of which a woman or girl was recently delivered, the accused person—

(a) may be convicted of the offence of preventing such child from being born alive by an act or omission of such a nature that, if the child had been born alive and had then died, he would be deemed to have unlawfully killed the child; or

(b) may be convicted of the offence of endeavouring by a secret disposition of the dead body of such child to conceal its birth,

if either of those offences is established by the evidence; and a person convicted under any of the foregoing provisions of this subsection is liable to the same punishment as if he had been convicted on an indictment charging him with the offence of which he is actually convicted.

(4) For the purposes of subsection (3) a woman or girl shall be deemed to have been recently delivered of a child if she had been delivered of the child within twelve months before its death.

[Section 288 proviso to subsection (1) amended by 2001:2 s.13 and Sch 2 effective 1 October 2001; subsections (1) and (2) amended and subsection (1A) inserted by 2014 : 14 s. 4 effective 19 September 2014; Section 288 subsection (3) amended by 2014 : 14 s. 4 effective 19 September 2014Section 288 proviso to subsection (1) amended by 2001:2 s.13 and Sch 2 effective 1 October 2001; proviso to subsection (1) deleted, subsections (2) and (3) amended and subsection (1A) inserted by 2014 : 14 s. 4 effective 19 September 2014]

Attempted murder

289 Any person—

(a) who attempts unlawfully to cause the death of another person; or

(b) who, with intent unlawfully to cause the death of another person, does any act or omits to do any act which it is his duty to do, such act or omission being of such a nature as to be likely to endanger human life,

is guilty of a felony, and is liable to imprisonment for life.

[Section 289 amended by 1999:51 s.4 & Sch effective 23 December 1999; amended by 2014 : 14 s. 4 effective 19 September 2014]

Threatening to murder

290 Any person who, knowing the contents thereof, directly or indirectly causes any person to receive any writing threatening to kill any person, is guilty of a felony, and is liable to imprisonment for seven years.

Conspiracy to murder

291 Any person who conspires with any other person to kill any person, whether such person is in Bermuda or elsewhere, is guilty of a felony, and is liable to imprisonment for life.

Becoming accessory after the fact to murder

292 Any person who becomes an accessory after the fact to murder is guilty of a felony, and is liable to imprisonment for seven years.

Manslaughter

Constitution of offence of manslaughter

293 A person who unlawfully kills another person under such circumstances as not to constitute murder is guilty of manslaughter.

Manslaughter by negligence

294 Notwithstanding anything in section 293 or in those provisions of Part XV which impose duties relating to the preservation of human life, and without prejudice to anything in section 287 or in section 299 (which relate, respectively, to murder and infanticide), where a person is by operation of law deemed to have unlawfully caused the death of another person by reason only of doing an act or of making an omission, (being an act or omission which constitutes a failure to observe or perform a duty imposed upon him by the said provisions of Part XV) that person shall not be guilty of the offence of manslaughter unless the breach of duty involved in the act or omission whereby the death of that person was caused was such as to involve gross negligence or a reckless disregard of the life, safety or health of other persons.

Killing on provocation

295 Subject as hereinafter provided, when a person who unlawfully kills another person under circumstances which, but for the this section, would constitute murder, does the act which causes death in the heat of passion caused by sudden provocation and before there is time for his passion to cool, he is guilty of manslaughter only:

Provided that the foregoing provisions of this section shall have no effect so as to reduce an unlawful killing to manslaughter where the force used or the mode of retaliation is not reasonably proportionate to the provocation given.

Killing by use of excessive force where some force is lawful

296 An unlawful killing by a person of another person is manslaughter and not murder if the offender while in the exercise in good faith of any right to use force against another person uses more force than that allowed to him by law in relation to the exercise of that right and causes the death of the person against whom the force is used without premeditation and without any intention of doing more bodily harm than he honestly believes is necessary for the purpose of exercising that right.

Suicide pacts

297 (1) It is manslaughter and not murder for a person acting in pursuance of a suicide pact between him and another to kill the other or be a party to the killing himself or being killed by a third person.

(2) Where it is shown that a person charged with the murder of another killed the other or was a party to his killing himself or being killed, it shall be for the defence to prove that the person charged was acting in pursuance of a suicide pact between him and the other.

(3) For the purpose of this section "suicide pact" means a common agreement between two or more persons having for its object the death of all of them, whether or not each is to take his own life, but nothing done by a person who enters into a suicide pact shall be treated as done by him in pursuance of the pact unless it is done while he has the settled intention of dying in pursuance of the pact.

Defence of diminished responsibility

297A (1) Where a person unlawfully kills or is a party to that killing of another, he shall not be convicted of murder if he 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 mental responsibility for his 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 that offence.

(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 either of those offences in the case of any other party to it.

[Section 297A subsections (1) - (4) amended by 2014 : 14 s. 4 effective 19 September 2014]

Punishment of manslaughter: alternative convictions of other offences

298 (1) Any person who commits the offence of manslaughter is liable to imprisonment for life.

(2) Upon an indictment charging a person with unlawfully killing any other person, if upon the evidence it appears that the person alleged to have been killed was a child of which a woman or girl had been recently delivered, the accused person—

(a) may be convicted of the offence of preventing such child from being born alive by an act or omission of such a nature that, if the child had been born alive and had then died, he would be deemed to have unlawfully killed the child; or

(b) may be convicted of the offence of endeavouring by a secret disposition of the dead body of such child to conceal its birth,

if either of those offences is established by the evidence; and a person convicted under any of the foregoing provisions of this subsection is liable to the same punishment as if he had been convicted on an indictment charging him with the offence of which he is actually convicted.

(3) For the purposes of subsection (2) a woman or girl shall be deemed to have been recently delivered of a child if she had been delivered of the child within twelve months before its death.

Infanticide

Infanticide; alternative convictions of other offences

299 (1) Where a woman or girl by any wilful act or omission causes the death of her child (being a child under the age of twelve months) but at the time of the act or omission the balance of her mind was disturbed—

(a) by reason of her not having fully recovered from the effect of giving birth to the child; or

(b) by reason of the effect of lactation consequent upon the birth of the child,

then, notwithstanding that the circumstances were such that but for this section the offence would have amounted to murder, she shall be guilty of a felony called infanticide, and may for such offence be dealt with and punished as if she had been guilty of the manslaughter of the child.

(2) Where upon the trial of a woman or girl for the murder of her child (being a child under the age of twelve months) the jury are of opinion that she by any wilful act or omission caused the death of the child, but that at the time of the act or omission the balance of her mind was disturbed—

(a) by reason of her not having fully recovered from the effect of giving birth to the child; or

(b) by reason of the effect of lactation consequent upon the birth of the child,

then the jury may, notwithstanding that the circumstances were such that but for this section they might have returned a verdict of murder, return in lieu thereof a verdict of infanticide.

(3) Nothing in this section shall have effect so as to affect the powers of the jury upon indictment for the murder of a child—

(a) to return a verdict of manslaughter; or

(b) to return a verdict of acquittal on the ground of insanity; or

(c) to return a verdict of concealment of birth in pursuance of section 288(3).

(4) The provisions of section 288(2) shall apply in the case of a woman or girl charged upon an indictment for infanticide as those provisions apply in the case of a woman or girl charged upon an indictment for murder.

Offences relating to suicide

Aiding suicide of another

300 Any person—

(a) who procures another person to kill himself; or

(b) who counsels another person to kill himself and thereby induces him to do so; or

(c) who aids another person in killing himself,

is guilty of a felony, and is liable to imprisonment for ten years.

Child destruction

Child destruction

301 Any person who, when a woman or girl is about to be delivered of a child, prevents the child from being born alive by any act or omission of such a nature that, if the child had been born alive and had then died, he would be deemed to have unlawfully killed the child, is guilty of a felony, and is liable to imprisonment for ten years.

Concealment of birth

Concealment of birth of child

302 Any person who, when a woman or girl is delivered of a child, endeavours, by any secret disposition of the dead body of a child, to conceal the birth, whether the child died before, at, or after, its birth, is guilty of a misdemeanour, and is liable on conviction by a court of summary jurisdiction to imprisonment for twelve months and on conviction on indictment to imprisonment for two years.

PART XVII

OFFENCES ENDANGERING LIFE AND HEALTH: ASSAULTS

Assaults endangering life or health

Disabling in order to commit indictable offence

303 Any person who, by any means calculated to choke, suffocate, or strangle, or to cause grievous bodily harm, and with intent to commit or to facilitate the commission of an indictable offence, or to facilitate the flight of an offender after the commission or attempted commission of an indictable offence, renders or attempts to render any person incapable of resistance, is guilty of a felony, and is liable to imprisonment for ten years.

Stupefying in order to commit an indictable offence

304 Any person who, with intent to commit or to facilitate the commission of an indictable offence, or to facilitate the flight of an offender after the commission or attempted commission of an indictable offence, administers, or attempts to administer, any stupefying or overpowering drug or thing to any person, is guilty of a felony, and is liable to imprisonment for ten years.

Wounding etc with intent to do grievous bodily harm etc

305 Any person who, with intent to burn, maim, disfigure, or disable any person, or to do some grievous bodily harm to any person, or to resist or prevent the lawful arrest or detention of any person—

(a) unlawfully wounds or does any grievous bodily harm to any person by any means whatsoever; or

(b) unlawfully attempts in any manner to strike any person with any kind of projectile; or

(c) unlawfully causes any explosive substance to explode; or

(d) sends or delivers any explosive substance or other dangerous or noxious thing to any person; or

(e) causes any explosive substance or other dangerous or noxious thing to be taken or received by any person; or

(f) puts any corrosive fluid or any destructive or explosive substance in any place; or

(g) unlawfully casts or throws any such fluid or substance at or upon any person, or otherwise applies any such fluid or substance to the person of any person; or

(h) unlawfully shoots at any person with a loaded firearm, or attempts to discharge a loaded firearm at any person,

is guilty of a felony, and is liable to imprisonment for life.

[Section 305 amended by 2014 : 14 s. 4 effective 19 September 2014]

Doing grievous bodily harm etc

306 Any person—

(a) who unlawfully does grievous bodily harm to another person; or

(b) who unlawfully wounds another person; or

(c) who unlawfully, and with intent to injure or annoy any person, administers to, or causes any poison or other noxious thing to be administered to, or taken by, any person,

is guilty of a misdemeanour, and is liable on conviction by a court of summary jurisdiction to imprisonment for three years and on conviction on indictment to imprisonment for seven years.

[Section 306 amended by 2004:27 s.3 effective 3 December 2004]

Preventing escape from shipwreck

307 Any person—

(a) who unlawfully prevents or obstructs any person who is on board of or escaping from a vessel which is in distress, or wrecked or cast ashore, in his endeavours to save his life; or

(b) who unlawfully obstructs any person in his endeavour to save the life of any person so situated,

is guilty of a felony, and is liable to imprisonment for fifteen years.

Administering poison with intent to harm

308 Any person who unlawfully, and with intent to injure or annoy another person, administers to, or causes any poison or other noxious thing to be administered to, or taken by, any person, and thereby endangers his life, or does him some grievous bodily harm, is guilty of a felony, and is liable to imprisonment for ten years,

Serious assaults

Assault occasioning bodily harm

309 Any person who unlawfully assaults another person and thereby does him bodily harm, is guilty of a misdemeanour, and is liable on conviction by a court of summary jurisdiction to imprisonment for two years and on conviction on indictment to imprisonment for four years.

[Section 309 amended by 2004:27 s.4 effective 3 December 2004]

Assault on police officer, customs officer etc

310 Any person who assaults a police officer, customs officer or prison officer with the intention of doing bodily harm to or wounding or who does bodily harm to or who wounds such officer, while such officer is acting in the execution of his duty, or any person acting in aid of such officer while so acting, is guilty of a misdemeanour, and is liable on conviction by a court of summary jurisdiction to a fine of $5000 or to imprisonment for four years or to both such fine and imprisonment, or on conviction on indictment to imprisonment for five years.

[Section 310 amended by 1999:51 s.4 & Sch effective 23 December 1999; and by 2004:27 s.5 effective 3 December 2004]

Assault on, and intimidation of, judicial officer, prosecutor or Member of the Legislature

310A (1) Any person who assaults an official in the execution of his duty or any person acting in aid of such official while so acting, with the intention of doing bodily harm to or wounding or who does bodily harm to or who wounds such official or person, is guilty of an offence, and is liable on conviction by a court of summary jurisdiction to imprisonment for five years, or on conviction on indictment to imprisonment for twenty-five years.

(2) Any person who assaults an off-duty official as a consequence of, or in retaliation for, actions undertaken by that official in the execution of his duty, or because of the official's status as an official, with the intention of doing bodily harm to or wounding or who does bodily harm to or who wounds such official, is guilty of an offence, and is liable on conviction by a court of summary jurisdiction to imprisonment for five years, or on conviction on indictment to imprisonment for fifteen years.

(3) Any person who, by written or spoken word or conduct, threatens an official with any injury to his person, reputation or property, or to the person, reputation or property of anyone in whom the official is interested, with intent to cause alarm to the official, or to cause the official to do any act which he is not legally bound to do, or to omit to do any act which he is legally entitled to do, or to prevent the official from executing any of his duties, as a means of avoiding the execution of such threat, is guilty of an offence, and is liable on conviction by a court of summary jurisdiction to imprisonment for five years, or on conviction on indictment to imprisonment for ten years.

(4) No prosecution shall be instituted under this section without the consent of the Director of Public Prosecutions.

(5) In this section, "official" means—

(a) a judicial officer;

(b) a prosecutor;

(c) a member of the Legislature;

(d) a person who is serving as a juror.

[Section 310A inserted by 2026 : 23 s. 3 effective 1 October 2026]

Serious assaults

311 Any person—

(a) who assaults another person with intent to commit a felony, or with intent to resist or prevent the lawful arrest or detention of himself or of any other person; or

(b) who unlawfully assaults, resists, or obstructs any person engaged in the lawful execution of any process against any property or persons, or in making a lawful distress, while so engaged; or

(c) who assaults, resists, or obstructs, any person engaged in such lawful execution of process, or in making a lawful distress with intent to rescue any property lawfully taken under such process or distress; or

(d) who assaults any person on account of any act done by him in the execution of any duty imposed on him by law; or

(e) who assaults any person in pursuance of any unlawful conspiracy respecting any manufacture, trade, business, or occupation, or respecting any person or persons concerned or employed in any manufacture, trade, business, or occupation, or the wages of any such person or persons,

is guilty of a misdemeanour and is liable on conviction on indictment to imprisonment for five years or on conviction by a court of summary jurisdiction to imprisonment three years or to a fine of $3000 or to both such imprisonment and fine.

[Section 311 amended by 2004:27 s.6 effective 3 December 2004]

Assault on person protecting wreck etc

312 Any person who unlawfully assaults and uses actual violence to a Justice of the Peace, a police officer, or any other person, while acting in the execution of his duty in or concerning the preservation of a vessel in distress, or of any vessel or goods wrecked, or stranded or lying under water, is guilty of a felony, and is liable on conviction on indictment to imprisonment for three years or on conviction by a court of summary jurisdiction to imprisonment for six months or to a fine of $1,250 or to both such imprisonment and fine.

Assault in interference with freedom of trade or work

313 Any person who assaults another person with intent to hinder or prevent him from working at or exercising his lawful trade, business or occupation, or from buying, selling; or otherwise dealing with any property intended for sale, is guilty of a summary offence, and is liable to imprisonment for six months or to a fine of $600.

Common assault

Common assault

314 (1) Any person who unlawfully assaults another person is guilty of an offence, and is liable, if no greater punishment is provided, on conviction by a court of summary jurisdiction, to imprisonment for twelve months.

(2) Without prejudice to anything in the foregoing provisions of this Act, the court of summary jurisdiction by which a person is convicted under this section may require the offender, in addition to any other punishment, to enter into a recognizance, with or without sureties, to keep the peace and be of good behaviour for any term not exceeding six months from the date of the conviction or of the expiration of the sentence, whichever is the later date; and if an offender directed to enter into a recognizance as aforesaid fails duly to do so, the court of summary jurisdiction may order him to be imprisoned for two months, in addition to any other punishment to which he had been sentenced.

(3) The foregoing provisions of this section shall apply to cases of assaults committed on the high seas, or in places out of Bermuda, on board of ships registered in, or belonging to, Bermuda.

Carrying offensive weapons

Prohibition of the carrying of offensive weapons without lawful authority or reasonable excuse

315 (1) Any person who without lawful authority or reasonable excuse, the proof whereof shall lie upon him, has in his possession in any public place any offensive weapon shall be guilty of a misdemeanour, and shall be liable—

(a) on summary conviction, to imprisonment for two years or to a fine of $1500 or to both such imprisonment and fine;

(b) on conviction on indictment, to imprisonment for four years or to a fine of $5000 or to both such imprisonment and fine.

(2) Where any person is convicted of an offence under subsection (1), the Court may order the forfeiture of destruction or any weapon in respect of which the offence was committed.

(3) A police officer may search and arrest without warrant any person whom he has reasonable cause to believe to be committing an offence under subsection (1).

(4) In this section-

"offensive weapon" means any article made or adapted for use for causing injury to or incapacitating a person, or intended by the person having it with him for such use by him or by some other person.

[Section 315 subsection (1) amended by 2004:27 s.7 effective 3 December 2004; subsection (4) "offensive weapon" substituted by 2005:15 s.5 effective 27 July 2005; "public place" deleted by 2010 : 5 s. 4 effective 19 March 2010]

Prohibited weapons

Order by Governor declaring prohibited weapons.

315A (1) In this section and section 315B "prohibited weapon" means any offensive weapon declared by the Governor to be a prohibited weapon.

(2) The Governor may by order declare any offensive weapon to be a prohibited weapon and such order shall be subject to the negative resolution procedure.

Offences in respect of prohibited weapons

315B (1) It is an offence for any person to—

(a) have in his possession;

(b) import;

(c) carry;

(d) manufacture;

(e) supply or offer to supply to another; or

(f) be concerned in the supplying to another of,

a prohibited weapon.

(2) The penalties referred to in section 315(1) in relation to the carrying of offensive weapons shall apply to any person who contravenes the provisions of this section relating to prohibited weapons.

Offence of having article with blade or point in public place

315C (1) Subject to subsections (4) and (5), any person who has an article to which this section applies with him in a public place shall be guilty of an offence.

(2) Subject to subsection (3), this section applies to any article which has a blade or is sharply pointed except a folding pocketknife.

(3) This section applies to a folding pocketknife if the cutting edge of its blade exceeds 3 inches.

(4) It shall be a defence for a person charged with an offence under this section to prove that he had good reason or lawful authority for having the article with him in a public place.

(5) Without prejudice to the generality of subsection (4), it shall be a defence for a person charged with an offence under this section to prove that he had the article with him—

(a) for use at work;

(b) for use at organized sporting events;

(c) for religious reasons; or

(d) as part of any national costume.

(6) A court which finds a person guilty of an offence under subsection (1), shall—

(a) on summary conviction, impose a term of imprisonment of not less than three years and not more than five years and may in addition to the prison sentence, impose a fine of $5,000;

(b) on conviction on indictment, impose a term of imprisonment of not less than five years and not more than seven years and may in addition to the prison sentence, impose a fine of $10,000.

(7) In this section "public place" includes any place to which at the material time the public have or are permitted access, whether on payment or otherwise.

(8) This section shall not have effect in relation to anything done before it comes into operation.

(9) An offence under this section is an offence for which an offender may be arrested without warrant, and the provisions of section 454 shall apply to such offence.

[Section 315C inserted by 2005:15 s.6 effective 27 July 2005]

Offence of having article with blade or point (or offensive weapon) on school premises

315D (1) Any person who has an article to which section 315C applies with him on school premises shall be guilty of an offence.

(2) Any person who has an offensive weapon within the meaning of section 315(4) with him on school premises shall be guilty of an offence.

(3) It shall be a defence for a person charged with an offence under subsection (1) or (2) to prove that he had good reason or lawful authority for having the article or weapon with him on the premises in question.

(4) Without prejudice to the generality of subsection (3), it shall be a defence for a person charged with an offence under subsection (1) or (2) to prove that he had the article or weapon in question with him—

(a) for use at work;

(b) for use at organized sporting events;

(c) for educational purposes;

(d) for religious reasons; or

(e) as part of any national costume.

(5) A court which finds a person guilty of an offence under subsection (1)—

(a) shall on summary conviction, impose a term of imprisonment of not less than five years and not more than seven years and may in addition to the prison sentence, impose a fine of $10,000; or

(b) shall on conviction on indictment, impose a term of imprisonment of not less than seven years and not more than ten years and may in addition to the prison sentence, impose a fine of $20,000.

(6) A court which finds a person guilty of an offence under subsection (2)—

(a) shall on summary conviction, impose a term of imprisonment of not less than seven years and not more than ten years and may in addition to the prison sentence, impose a fine of $20,000; or

(b) shall on conviction on indictment, impose a term of imprisonment of not less than ten years and not more than fifteen years and may in addition to the prison sentence, impose a fine of $25,000.

(7) In this section and section 315E, "school premises" means land used for the purposes of a school excluding any land occupied solely as a dwelling by a person employed at the school; and "school" has the meaning given by section 2(1) of the Education Act 1996.

(8) An offence under this section is an offence for which an offender may be arrested without warrant, and the provisions of section 454 shall apply to such offence.

[Section 315D inserted by 2005:15 s.6 effective 27 July 2005]

Power of entry to search for articles with a blade or point and offensive weapons

315E (1) A police officer may enter school premises and search those premises and any person on those premises for—

(a) any article to which section 315C applies; or

(b) any offensive weapon within the meaning of section 315(4),

if he has reasonable grounds for believing that an offence under section 315D of this Act is being, or has been, committed.

(2) If in the course of a search under this section a police officer discovers an article or weapon which he has reasonable grounds for suspecting to be an article or weapon of a kind described in subsection (1), he may seize and retain it.

(3) The police officer may use reasonable force, if necessary, in the exercise of the power of entry conferred by this section.

[Section 315E inserted by 2005:15 s.6 effective 27 July 2005]

Power to stop and search in anticipation of violence

315F (1) If a police officer of or above the rank of inspector reasonably suspects—

(a) that incidents involving serious violence may take place in any locality and that it is expedient to give an authorisation under this section to prevent their occurrence; or

(b) that persons are carrying dangerous instruments or offensive weapons in any locality without good reason,

he may give an authorisation that the powers conferred by this section are to be exercisable at any place within that locality for a specified period not exceeding two weeks.

(2) If it appears to an officer of or above the rank of superintendent that it is expedient to do so, having regard to offences which have, or are reasonably suspected to have, been committed in connection with any activity falling within the authorisation, he may direct that the authorisation shall continue in being for a further period not exceeding one month or be reduced.

(3) If an inspector gives an authorisation under subsection (1) he must, as soon as it is practicable to do so, cause an officer of or above the rank of superintendent to be informed.

(4) This section confers on any police officer in uniform power—

(a) to stop any pedestrian and search him or anything carried by him for offensive weapons or dangerous instruments; or

(b) to stop any vehicle and search the vehicle, its driver and any passenger for offensive weapons or dangerous instruments.

(5) A police officer may, in the exercise of the powers conferred by subsection (4), stop any person or vehicle and make any search he thinks fit whether or not he has any grounds for suspecting that the person or vehicle is carrying weapons or articles of that kind.

(6) If in the course of a search under this section a police officer discovers a dangerous instrument or an article which he has reasonable grounds for suspecting to be an offensive weapon, he may seize it.

(7) This section applies (with the necessary modifications) to ships, aircraft and hovercraft as it applies to vehicles.

(8) A person who fails to stop, or to stop a vehicle when required to do so by a police officer in the exercise of his powers under this section shall be liable on summary conviction to a fine of $500 or to imprisonment for a term of three months or to both.

(9) Any authorisation under this section shall be in writing signed by the officer giving it and shall specify the grounds on which it is given and the locality in which and the period during which the powers conferred by this section are exercisable and a direction under subsection (3) shall also be given in writing or, where that is not practicable, recorded in writing as soon as it is practicable to do so.

(10) Where a vehicle is stopped by a police officer under this section, the driver shall be entitled to obtain a written statement that the vehicle was stopped under the powers conferred by this section if he applies for such a statement not later than the end of the period of twelve months from the day on which the vehicle was stopped.

(11) A person who is searched by a police officer under this section shall be entitled to obtain a written statement that he was searched under the powers conferred by this section if he applies for such a statement not later than the end of the period of twelve months from the day on which he was searched.

(12) In this section—

"dangerous instruments" means instruments which have a blade or are sharply pointed;

"offensive weapon" has the meaning given in section 315(4).

(13) For the purposes of this section, a person carries a dangerous instrument or an offensive weapon if he has it in his possession.

(14) The powers conferred by this section are in addition to and not in derogation of, any power otherwise conferred.

[Sections 315F inserted by 2005:15 s.6 effective 27 July 2005; Section 315F amended by 2010 : 5 s. 5 effective 19 March 2010]

Power to deal with items obscuring or concealing identity

315G (1) A police officer may in any public place, stop a person and—

(a) require that person to remove any item which the police officer reasonably suspects that person is wearing to obscure or conceal his identity; or

(b) seize any item which that person has and which the police officer reasonably believes that person could wear to obscure or conceal his identity.

(2) A police officer may use reasonable force, if necessary, in the exercise of the powers conferred under subsection (1).

(3) A person who fails to comply with an order from a police officer under subsection (1) or obstructs a police officer in the course of performing his duties under subsection (1), commits an offence and is liable on summary conviction, to a fine not exceeding $2,500 or to imprisonment for a term not exceeding three months or to both such fine and imprisonment.

[Section 315G inserted by 2010 : 5 s. 6 effective 19 March 2010]

Failure to provide necessaries of life

Failure to supply necessaries

316 Any person who, being charged with the duty of providing for another person the necessaries of life, without lawful excuse fails to do so, whereby the life of that other person is, or is likely to be, endangered, or his health is, or is likely to be, permanently injured, is guilty of a misdemeanour, and is liable on conviction by a court of summary jurisdiction to imprisonment for twelve months and on conviction on indictment to imprisonment for two years.

Endangering life or health of servants or apprentices

317 Any person who, being charged as a master or mistress with the duty of providing necessary food, clothing or lodging, for a servant or apprentice under the age of sixteen

years, unlawfully fails to perform that duty, or in any other manner does any harm or causes any harm to be done to such servant or apprentice whereby in either case the life of such servant or apprentice is, or is likely to be, endangered, or his health is, or is likely to be, permanently injured, is guilty of a misdemeanour, and is liable on conviction by a court of summary jurisdiction to imprisonment for twelve months, and on conviction on indictment to imprisonment for two years.

Abandonment and exposure of children

Endangering life of child under 2 years of age

318 Any person who unlawfully abandons or exposes a child under the age of two years, whereby the life of such child, is or is likely to be, endangered, or his health is, or is likely to be permanently injured, is guilty of a misdemeanour, and is liable to imprisonment for three years.

Setting man-traps

Setting man-traps etc

319 (1) Any person—

(a) who sets or places any spring-gun, man-trap, or other engine calculated to destroy human life or to inflict grievous bodily harm; or

(b) who causes any such thing to be set or placed in any place with the intent that it may kill or inflict grievous bodily harm upon a trespasser or any person coming in contact with it; or

(c) who sets or places any such thing in any such place and in any such manner that it is likely to cause any such result,

is guilty of a misdemeanour, and is liable on conviction by a court of summary jurisdiction to imprisonment for twelve months and on conviction on indictment to imprisonment for two years.

(2) Any person who knowingly permits any such spring-gun, mantrap, or other engine, which has been set or placed by another person in any such place and in any such manner that it is likely to cause any such result, to continue so set or placed in any place which is then in, or afterwards comes into, his possession or occupation, is deemed to have set and placed the gun, trap or engine, with the intent aforesaid.

(3) The foregoing provisions of this section shall not make it unlawful—

(a) to set any gun or trap such as is usually set for the purpose of destroying vermin; or

(b) to set any spring-gun, man-trap or engine, at night in a dwelling-house for the protection of the dwelling-house. Reckless etc driving of vehicles

Reckless etc driving of vehicle

320 Any person who, having the charge of any vehicle, however propelled, does or causes to be done, by reckless, wanton or furious driving or racing, or other wilful misconduct, or by wilful neglect, any bodily harm to any person, is guilty of a misdemeanour, and is liable on summary conviction to imprisonment for two years and on conviction on indictment to imprisonment for four years.

[Section 320 amended by 2004:27 s.8 effective 3 December 2004]

Offences affecting liberty

Deprivation of liberty

321 Any person who unlawfully confines or detains another person in any place against his will, or otherwise unlawfully deprives another person of his personal liberty, is guilty of a misdemeanour, and is liable on conviction by a court of summary jurisdiction to imprisonment for three years and on conviction on indictment to imprisonment for seven years.

[Section 321 amended by 2004:27 s.9 effective 3 December 2004]

Intimidation

322 Any person who—

(a) by written or spoken word or conduct, threatens another with any injury to his person, reputation or property, or to the person, reputation or property of anyone in whom that person is interested, with, intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which he is legally entitled to do, or to prevent that person from carrying out any duties or work essential to the maintenance of public security, public tranquility, or public order or to the maintenance of essential services, as a means of avoiding the execution of such threat; or

(b) in the like manner and with the like intention threatens persons generally or any category or description of persons,

is guilty of a summary offence and is liable to imprisonment for twelve months.

Increased penalty zones

322A (1) Where a person is being sentenced for an offence under sections 306, 309, 310, 311, 314(1), 315(1), 315C, and 320 of this Act which was committed (whether wholly or partly) in an increased penalty zone, the court shall—

(a) first determine the sentence ("the basic sentence") in accordance with established principles but without regard to this section; then

(b) where the basic sentence includes a term of imprisonment or a fine, increase that sentence by adding an additional element determined in accordance with subsection (2).

(2) The additional element shall be—

(a) a term of imprisonment of at least one year but not more than three years, where the basic sentence includes a term of imprisonment of less than seven years;

(b) a term of imprisonment of at least three years but not more than five years, where the basic sentence includes a term of imprisonment of seven years or more;

(c) a fine of at least $1000 but not more than $10,000, where the basic sentence includes a fine.

(3) For the purposes of this section, "increased penalty zone" means any of the places listed in the following Table.

TABLE OF INCREASED PENALTY ZONES

1 For the purposes of subsection (1), the following places are increased penalty zones—

(a) any of the following places—

(i) any premises of a school or day care centre as defined by the Education Act 1996 or Part IX of the Children Act 1998;

(ii) any registered children's home or residential home under the Children Act 1998 ;

(iii) the Bermuda College;

(iv) the National Sports Centre; and any other field or ground where organised sporting events are held;

(v) casino premises as defined in section 2 of the Gaming Act 2014;

and any place within 300 metres of such a place; and

(b) any of the following places—

(i) a playground, public park, public playing field, public garden or public beach;

(ii) any venue where an organised community event is taking place, such as Harbour Nights, a musical concert or other cultural or artistic event;

(iii) a camp site maintained by the Department of Sport and Recreation;

(iv) a swimming pool intended for use by the public;

(v) a video games facility;

(vi) a youth centre;

(vii) the bus terminal in Hamilton;

(viii) a drug treatment or rehabilitation facility;

(ix) the hospitals, as defined by the Bermuda Hospitals Board Act 1970;

(x) a prison;

and any place within 100 metres of such a place.

2 In this Table—

"drug treatment or rehabilitation facility" means—

(a) a treatment or rehabilitation centre established by regulations made under section 24 of the Misuse of Drugs Act 1972; or

(b) any other place where persons addicted to or dependent upon any controlled drug receive treatment or assistance with rehabilitation;

"playground" means an open area with playground equipment intended for use by the public for recreational purposes;

"prison" means a place declared to be a prison under section 5 of the Prisons Act 1979;

"video games facility" means a place of business where young persons may play video or electronic games;

"youth centre" means any place operated by—

(a) the Youth Affairs section within the Ministry of Youth, Social Development and Seniors;

(b) a church; or

(c) a sports club;

where young persons may pursue organised sports or leisure activities;

"young persons" means persons under the age of eighteen.

(4) Where the Minister considers it in the public interest to do so, he may, by order subject to the negative resolution procedure, amend the Table so as—

(a) to add to the definition of increased penalty zone any particular place or any description of place; or

(b) to amend any distances there mentioned.

[Section 322A inserted by 2004:27 s.10 effective 3 December 2004; subsection (1) amended by 2005:15 s.7 effective 25 July 2005; paragraph 1 in the Table of Increased Penalty Zones amended by 2014 : 37 s. 202 effective 6 November 2015; Section 322A amended by 2021 : 23 s. 54 effective 1 August 2021; Section 322A amended by BR 2 / 2024 para. 2 effective 8 January 2024]

Power of arrest for assault

322B (1) This section applies to offences under sections 306, 309, 310, 311, 315, 320 and 321.

(2) An offence to which this section applies is an offence for which the offender may be arrested without warrant.

[Section 322B inserted by 2004:27 s.10 effective 3 December 2004]

PART XVIII

SEXUAL ASSAULTS

Sexual assault

323 A person who commits a sexual assault is guilty of a felony and is liable—

(a) on conviction on indictment to imprisonment for twenty years;

(b) on summary conviction to imprisonment for five years.

[Section 323 replaced by 1993 : 2 effective 1 June 1993]

Sexual assault by person with AIDS, etc

324 (1) It is a sexual assault if a person—

(a) knowing that he has a sexual disease, does a sexual act which—

(i) involves contact between any part of his body and any part of the body of another person (whether or not that other person is his spouse or consents to the act); and

(ii) is capable of resulting in the transfer of body fluids to that other person; and

(b) before he does the act does not inform that other person that he has the disease, either identifying the disease or making clear to that other person that he has a disease to which section 324 of the Criminal Code applies.

(2) "Sexual disease" in subsection (1) of this section and in subsection (2) of section 325 means Acquired Immune Deficiency Syndrome or hepatitis B or Human Immunodeficiency Virus (HIV) infection.

(3) This section is without prejudice to the existence of other kinds of sexual assault.

[Section 324 replaced by 1993 : 2 effective 1 June 1993]

Serious sexual assault

325 (1) A person commits a serious sexual assault, if, in committing a sexual assault, he—

(a) carries, uses, or threatens to use, a weapon or an imitation of a weapon; or

(b) causes bodily harm to the complainant; or

(c) threatens to cause bodily harm to a person other than the complainant; or

(d) is a party to the offence with another person.

(2) A person also commits a serious sexual assault if, knowing that he has a sexual disease, he commits a sexual assault other than a sexual assault under section 324.

(3) A person who commits a serious sexual assault is guilty of a felony and is liable on conviction on indictment to imprisonment for thirty years.

[Section 325 replaced by 1993 : 2 effective 1 June 1993]

Aggravated sexual assault

326 (1) A person commits an aggravated sexual assault if, in committing a sexual assault on another person, he wounds, maims or disfigures that other person or endangers his life.

(2) A person who commits an aggravated sexual assault is guilty of a felony and is liable on conviction on indictment to imprisonment for life.

[Section 326 replaced by 1993 : 2 effective 1 June 1993]

Corroboration not required

327 The rules requiring corroboration in sexual offences are abrogated and, accordingly, where an accused is charged with a sexual offence—

(a) corroboration is not required for a conviction; and

(b) the judge shall not instruct the jury that it is unsafe to find the accused guilty in the absence of corroboration.

[Section 327 replaced by 1993 : 2 effective 1 June 1993]

Rules about recent complaint abrogated

328 The rules relating to evidence of recent complaint are abrogated with respect to sexual offences.

[Section 328 replaced by 1993 : 2 effective 1 June 1993]

Evidence of complainant's sexual activity

329 (1) If at a trial a person is for the time being charged with a sexual offence, no evidence shall be adduced, and no question in cross-examination shall be asked, at the trial about any sexual activity of the complainant, other than the sexual activity that forms the subject-matter of the charge, whether with the accused or with any other person or with any animal or thing, unless the judge gives leave therefor on the grounds that the evidence or question—

(a) relates to specific instances of sexual activity; and

(b) is relevant to an issue in the case; and

(c) has significant probative value or relevance that is not substantially outweighed by the danger of prejudice to the proper administration of justice.

(2) Where before a special court or at a preliminary inquiry any person is for the time being charged with a sexual offence, no evidence shall be adduced or any question asked about any sexual activity of the complainant, other than the sexual activity that forms the subject-matter of the charge, whether with the accused or with any other person or with any animal or thing, unless the chairman or the magistrate gives leave therefor on the grounds specified in paragraphs (a) to (c) of subsection (1).

(3) A judge shall not give leave under subsection (1), and a chairman or magistrate shall not give leave under subsection (2), except on a special application made to him, and shall, in deciding whether or not to give such leave, take into account—

(a) the interests of justice, including the right of the accused to make a full answer and defence; and

(b) where the evidence or question is to be considered by a jury, the risk that the evidence or question may unduly arouse sentiments of prejudice, sympathy or hostility in the jury; and

(c) the right of the complainant and of every individual to personal security and to the full protection and benefit of the law; and

(d) the need to remove from the fact-finding process any discriminatory belief or bias; and

(e) the potential prejudice to the complainant's personal dignity and right of privacy; and

(f) whether there is a reasonable prospect that the evidence or question will assist in arriving at a just determination in the case; and

(g) society's interest in encouraging the reporting of sexual offences; and

(h) any other factor that the judge or the chairman or the magistrate considers relevant.

(4) An application referred to in subsection (3) is an application for a hearing, and must be made in writing and set out—

(a) detailed particulars of the evidence that the accused seeks to adduce or of the question or questions that he seeks to ask; and

(b) the relevance of that evidence or that question or those questions to an issue in the case;

and a copy of the application must be delivered to the prosecutor and to the clerk of the court not less than two clear days before the hearing of the application.

(5) At the hearing of such an application—

(a) the jury, where a jury are involved, and the public, shall be excluded; and

(b) the complainant is not a compellable witness.

[Section 329 replaced by 1993 : 2 effective 1 June 1993]

Reputation evidence

329A In proceedings in respect of a sexual offence, evidence of sexual reputation, whether general or specific, is not admissible for the purpose of challenging or supporting the credibility of the complainant.

[Section 329A added by 1993:2 effective 1 June 1993]

Spouse may be charged

329B A husband or wife may be charged with, and convicted of, an offence under section 323 or 324 or 325 or 326 in respect of his or her spouse, whether or not the spouses were living together at the time the activity that forms the subject-matter of the charge occurred.

[Section 329B added by 1993:2 effective 1 June 1993]

Restrictions on publicity in relation to trial of sexual offences

329C (1) After a person has been arrested and charged with a sexual offence, no matter likely to lead members of the public to identify a person as the complainant in relation to that charge shall be published in a written publication available to the public, or be broadcast, except as authorized by a direction given under this section.

(2) If, before the commencement of a trial at which a person is charged with a sexual offence, he or another person against whom the complainant may be expected to give evidence at the trial applies to a judge for a direction under this subsection and satisfies the judge—

(a) that the direction is required for the purpose of inducing persons to come forward who are likely to be needed as witnesses at the trial; and

(b) that the conduct of the applicant's defence or case at the trial is likely to be substantially prejudiced if the direction is not given,

the judge shall direct that subsection (1) shall not, by virtue of the accusation alleging the sexual offence in question, apply in relation to the complainant.

(3) If at a trial at which a person is charged with a sexual offence the judge is satisfied—

(a) that the effect of subsection (1) is to impose a substantial and unreasonable restriction upon the reporting of proceedings at the trial; and

(b) that it is in the public interest that the restriction should be removed or relaxed,

he shall direct that subsection (1) shall not apply to such matter relating to the complainant as is specified in the direction; but a direction shall not be given under this subsection by reason only of an acquittal of an accused at the trial.

(4) If a person who has been convicted of a sexual offence and has given notice of appeal to the Court of Appeal against the conviction, or notice of an application for leave so to appeal, applies to the Court of Appeal for a direction under this subsection and satisfies that Court—

(a) that the direction is required for the purpose of obtaining evidence in support of the appeal; and

(b) that he is likely to suffer substantial injustice if the direction is not given,

that Court shall direct that subsection (1) shall not, by virtue of an accusation which alleges a sexual offence and is specified in the direction, apply in relation to a complainant so specified.

(5) If any matter is published or broadcast in contravention of subsection (1) or (6), each of the following persons, namely—

(a) in the case of publication in a newspaper or periodical, any proprietor, any editor and any publisher of the newspaper or periodical;

(b) in the case of any other publication, the person who publishes the publication;

(c) in the case of a broadcast, any body corporate which transmits or provides the programme in which the broadcast is made, and any person having functions in relation to the programme corresponding to those of an editor of a newspaper,

is guilty of a summary offence, and is liable on conviction to a fine of $10,000.

(6) After a person has been charged with a sexual offence, no matter likely to lead members of the public to identify him as the person against whom the accusation has been made shall be published in a written publication available to the public, or be broadcast, unless and until he has been convicted or a direction allowing publication or broadcasting has been made under subsection (7) or (8).

(7) If at a preliminary inquiry, or before a trial, or during a trial, at which a person is charged with a sexual offence an accused person applies to the magistrate, a judge or the trial judge for a direction that subsection (6) shall not apply in relation to him, the magistrate or judge shall so direct unless he is satisfied that such a direction will prejudice another accused.

(8) If at the trial of a person charged with a sexual offence the judge is satisfied that the effect of subsection (6) is to impose a substantial and unreasonable restriction upon the reporting of the proceedings and that it is in the public interest that the restriction should be removed, he shall direct that subsection (6) shall not apply in relation to that person.

(9) If after the commencement of a trial at which a person is charged with a sexual offence a new trial is ordered, any direction under this section shall not have effect in respect of the new trial; and if such a direction is wished a fresh application shall be made.

(10) For the purposes of this section and sections 327, 328, 329, 329A and 542A, "sexual offence" means any offence under Part X or this Part, and any attempt to commit such an offence.

(11) Nothing in this section—

(a) prohibits the publication or broadcasting, in consequence of an accusation alleging a sexual offence, of matter consisting only of a report of legal proceedings other than proceedings at, or intended to lead to, or on an appeal arising out of, a trial at which the accused is charged with that offence; or

(b) affects any prohibition or restriction imposed by virtue of any other enactment upon a publication or broadcast.

[Section 329C added by 1993:2 effective 1 June 1993; Section 329C amended by 2018 : 64 s. 3 effective 7 February 2019]

Definitions

329D (1) In sections 329D to 329H—

"offender" means a person convicted of a serious personal injury offence;

"serious personal injury offence" means—

(a) a sexual offence; and

(b) any indictable offence, other than a sexual offence, except treason, or murder, involving—

(i) the use or attempted use of violence against another person;

(ii) conduct endangering or likely to endanger the life or safety of another person or inflicting or likely to inflict severe psychological damage upon another person,

and for which the offender may be sentenced to imprisonment for ten years or more.

"sex offender" means a person who has been convicted of a sexual offence;

"sexual offence" means any of the following—

(i) carnal knowledge of a girl under 14 (section 180);

(ii) carnal knowledge of a girl between 14 and 16 (section 181);

(iii) sexual exploitation of a young person (section 182A);

(iv) sexual exploitation of a young person by a person in a position of trust (section 182B);

(v) incest (section 191);

(vi) *[Repealed by 2019 : 36 s. 26]*

(vii) indecent acts in public or with intent to offend (section 197);

(viii) indecent act involving children (section 198);

(ix) sexual assault (section 323);

(x) sexual assault by a person with AIDS etc. (section 324);

(xi) serious sexual assault (section 325);

(xii) aggravated sexual assault (section 326);

(xiii) showing child abusive material, child pornography or offensive material to a child [section 182C];

(xiv) use of children in the production of child abusive material or child pornography (section 182D);

(xv) luring of a child (section 182E);

(xva) luring of a young person by person in a position of trust (section 182EA);

(xvi) making, distributing, etc. of child abusive material or child pornography (section 182F);

(xvii) possession of child abusive material or child pornography (section 182G);

(xviii) accessing of child abusive material or child pornography (section 182H);

(xix) unlawful anal intercourse (section 177);

(xx) procuring children to participate in pornographic performances (section 182FA);

(xxi) attendance at pornographic performance involving a child (section 182HA);

(xxii) intercourse with a person with a severe mental impairment (section 183);

(xxiii) obtaining prostitution from person who is not an adult (section 185A).

(2) The Minister may by order amend the list of sexual offences set out in subsection (1) by addition, deletion or variation of any offence.

(3) An order under subsection (2) shall be subject to the affirmative resolution procedure.

(4) References to offences in subsection (1) include a reference to an attempt to commit that offence.

(5) In the definition of "sexual offence" in subsection (1) references to sections are to sections of the Criminal Code Act 1907.

[Section 329D added by 2000:23 s.2 effective 29 October 2001; subsection (1) amended by 2007:8 s.4 effective 7 May 2008; subsection (1) amended in definition of "Minister" by 2007:8 s.6 effective 7 May 2008; "Minister" deleted by 2010 : 5 s. 7 effective 19 March 2010; subsection (1) amended in definition of "serious personal injury offence" by 2014 : 14 s. 4 effective 19 September 2014; Section 329D amended by 2019 : 36 s. 26 effective 1 November 2019; Section 329D subsection (1) definition "sexual offence" amended by 2020 : 37 s. 4 effective 19 August 2020]

Remand of offender for assessment

329E (1) Where an offender is convicted of a serious personal injury offence, the court may, before sentence is imposed on the offender, remand the offender for a period not exceeding 60 days to the custody of the Commissioner of Prisons.

(2) The Commissioner of Prisons shall cause an assessment to be conducted by a qualified professional to determine if the offender constitutes a threat to the life, safety or physical or mental well-being of any other person on the basis of evidence establishing—

(a) in the case of a sex offender, that—

(i) the offender, by his conduct in any sexual matter, including that involved in the commission of the offence for which he has been convicted, has shown a failure to control his sexual impulses; and

(ii) there is a likelihood of his causing injury, pain or other evil to other persons through failure in the future to control such impulses; or

(b) in any other case, that—

(i) the offender has demonstrated a pattern of repetitive behaviour, of which the offence for which he has been convicted forms a part, showing a failure to restrain his behaviour and a likelihood of his causing death or injury to other persons or inflicting severe psychological damage on other persons, through failure in the future to restrain his behaviour; or

(ii) the offender has demonstrated behaviour of such a brutal nature as to compel the conclusion that his behaviour in the future is unlikely to be inhibited by normal standards of behavioural restraint.

(3) The person charged with the conduct of an assessment under subsection (2) shall report his findings and recommendations for sentence to the court.

(4) The court, if on receipt of the report under subsection (3) it is satisfied that—

(a) it would be appropriate to impose a sentence of three years or more for the offence for which the offender has been convicted; and

(b) there is a substantial risk the offender will reoffend;

shall—

(c) impose a sentence for the offence for which the offender has been convicted, which sentence shall be imprisonment for not less than three years; and

(d) order the offender to be supervised in the community for the period specified in the order and subject to such conditions as are so specified, and such order may specify a condition that the offender be enrolled in the Mental Health Treatment Programme under section 68A(7).

(4A) For the purposes of subsection (4)(d), the period specified in the order shall be—

(a) a period of ten years or more, in the case of a sex offender; or

(b) a period not exceeding ten years, in any other case.

(5) The court shall not make an order under subsection (4)(d) if the offender has been sentenced to life imprisonment.

(6) If the court is not satisfied of the matters referred to in subsection (4)(a) and (b), it shall impose any sentence it could otherwise impose for the offence for which the offender has been convicted.

(7) Nothing in this section shall be construed to derogate from section 71E (which relates to dangerous offenders).

[Section 329E added by 2000:23 s.2 effective 29 October 2001; Subsection (4)(d) amended by 2016 : 30 s. 5 effective 15 August 2016; Section 329E subsection (4)(d) amended, and subsection (4A) inserted by 2018 : 64 s. 4 effective 7 February 2019; Section 329E subsection (1) amended by 2020 : 38 s. 2 effective 5 August 2020]

Supervision

329F (1) Subject to subsection (1A), an offender who is required to be supervised by an order under section 329E(4)(d) shall be supervised by a probation officer or other person specified in the order.

(1A) A sex offender who is required to be supervised by an order under section 329E(4)(d) shall be supervised by a probation officer, and the level of supervision shall be—

(a) determined by the probation officer according to the gravity of the offence committed and in accordance with the policies and procedures outlined in the case plan (as defined in section 70QA(2)); and

(b) guided by the risk posed by the offender and the need for the protection of the community.

(2) The period of supervision shall commence when the offender has finished serving—

(a) the sentence for the offence for which the offender has been convicted; and

(b) all other sentences for offences for which the offender is convicted and for which sentence of a term of imprisonment is imposed on the offender, whether before or after the conviction for the offence referred to in paragraph (a).

(3) A sentence imposed on an offender, other than a sentence of imprisonment, shall be served concurrently with the supervision order.

(4) An offender who is required to be supervised by an order under section 329E(4)(d) or his supervisor may apply to the court for an order reducing the period of supervision or terminating it on the ground that the offender no longer presents a substantial risk of reoffending.

(5) The onus of proving that ground is on the person making the application and the standard of proof is that of the balance of probabilities.

(6) No application under subsection (4) shall be heard unless notice of an application has been given to the Director of Public Prosecutions at the time the application is made.

(7) Where an offender commits an offence while under supervision and the court imposes a sentence of imprisonment, the period of supervision is suspended until the offender has finished serving that sentence.

(8) An offender who—

(a) is required to be supervised by an order made under section 329E(4)(d); and

(b) without reasonable excuse, fails or refuses to comply with that order or any condition specified in the order,

is guilty of an indictable offence and is liable to imprisonment for ten years.

(9) Before the expiration of a period of supervision imposed under section 329E or under this subsection the court shall, on receipt of a further assessment conducted by a qualified professional as referred to in that section, review the issue of supervision and may by order impose an additional period of supervision for such period as may be specified in the order and subject to such conditions as are so specified.

(10) An order made under subsection (9) shall be deemed to have been made under section 329E(4)(d).

[Section 329F added by 2000:23 s.2 effective 29 October 2001; Section 329F subsection (1) amended, and subsection (1A) inserted by 2018 : 64 s. 5 effective 7 February 2019]

Sex Offender Registration

Registration as a sex offender

329FA (1) There shall be established a sex offender register, to be maintained and administered by the Minister, which shall contain—

(a) a list of all persons—

(i) convicted of a sexual offence in Bermuda and sentenced to a term of imprisonment for the offence;

(ii) convicted of an overseas sexual offence and sentenced to a term of imprisonment for the offence, where the offender is or becomes resident in Bermuda;

(b) photographs of all such convicted sex offenders;

(c) home addresses of all such convicted sex offenders;

(ca) a DNA profile relating to a sex offender which is derived from a DNA sample obtained in accordance with the provisions of the Police and Criminal Evidence Act 2006 and all relevant Codes of Practice thereunder;

(d) any information that is reasonably necessary to be included in the sex offender register; and

(e) any information that is reasonably necessary to give effect to the protocol established under section 329H.

(2) Where a person is sentenced to a term of imprisonment following conviction for a sexual offence, the court shall order the Commissioner of Police to enter that person's name, photograph and home address in the sex offender register.

(3) At the time of sentencing, the sex offender shall be informed by the court that his name has been entered in the register.

(4) A person whose name is entered in the sex offender register shall be subject to a period of registration of ten years or more as may be determined by the offender risk management team, following guidance issued by the Minister in a code of practice.

(4A) No person whose name is entered in the sex offender register shall be employed in any of the professions listed under section 20(2) of the Children Act 1998.

(5) The period of registration shall be suspended during any time in which the offender is imprisoned.

(6) A person whose name is listed in the sex offender register shall during the period of registration—

(a) report to the offender risk management team as required by the case plan;

(b) submit to such assessments as may be determined by the offender risk management team;

(c) notify the offender risk management team in writing in advance of any intended change of address;

(d) notify the offender risk management team before any change of employment or occupation;

(e) notify the offender risk management team in advance of any plans to travel overseas, and shall not leave Bermuda without the written permission of the team; and

(f) comply with such other conditions as may be imposed by the offender risk management team for the purposes of facilitating the successful reintegration of the person into the community.

(7) A person who—

(a) fails, without reasonable excuse, to comply with any requirements imposed by or under subsection (6); or

(b) notifies the offender risk management team, in purported compliance with those requirements, of any information which he knows to be false,

is guilty of an offence and is liable on summary conviction to a fine of $3,000 or imprisonment for six months, or to both.

(8) Notwithstanding subsection (4), a person whose name is listed in the sex offender register may apply to the court for an order reducing the period of registration, or terminating it, on the ground that he does not present a risk of reoffending.

(9) The onus of proving that ground is on the person making the application and the standard of proof is that of the balance of probabilities.

(10) No application under subsection (8) shall be heard unless notice of an application has been given to the Director of Public Prosecutions at the time the application is made.

(11) In this section—

"case plan" means a plan devised by the offender risk management team to manage offender supervision;

"offender risk management team" means a team appointed by the Minister comprising representatives from—

(a) the Bermuda Police Service;

(b) the Department of Court Services; and

(c) the Department of Corrections;

"overseas sexual offence" means an offence committed in an overseas jurisdiction which is of like nature to a sexual offence as defined in section 329D;

(12) For the purposes of this section, the functions of the offender risk management team are—

(a) to manage the supervision of offenders in the community in accordance with the policies of the offender risk management team;

(b) to assess the re-offending risks an offender may pose in order to assist with effective supervision;

(c) to provide on-going or regular assessments that will guide an offender's case management plan;

(d) to manage identified risks (including drug addiction, substance abuse and mental health concerns) in order to minimize re-offending by an offender; and

(e) to require the offender to submit to an updated risk assessment to be conducted by a qualified professional, as outlined in the protocol established under section 329G upon the offender risk management team receiving intelligence or pertinent information of any suspected or purported elevation in risk of the offender's re-offending.

[Section 329FA inserted by 2018 : 64 s. 6 effective 7 February 2019; Section 329FA subsection (1)(ca) and subsection (4A) inserted by 2019 : 36 s. 27 effective 1 November 2019]

Disclosure of information

329FB (1) Subject to section 329H, no person shall, without lawful authority, disclose information contained in the sex offender register established in accordance with section 329FA, or held for the purposes of section 329G.

(2) Any person who discloses information in contravention of this section commits an offence and is liable on summary conviction to a fine of $10,000.

(3) The Public Access to Information Act 2010 shall not apply in relation to the sex offender register.

[Section 329FB inserted by 2018 : 64 s. 6 effective 7 February 2019]

Notification

Notification requirements for sex offenders

329G (1) A person becomes subject to the notification requirements of this section, if—

(a) after this section comes into force he is convicted of a sexual offence; or

(b) at the time this section comes into force—

(i) he is serving a sentence of imprisonment; or

(ii) he has been released on licence after serving the whole or part of a sentence of imprisonment,

in respect of a sexual offence.

(2) A person who is subject to the notification requirements of this section shall continue to be so subject for a period of ten years commencing on—

(a) the date of his conviction; or

(b) if later, the date of his release from prison, whether released on licence or on the expiration of his term of imprisonment.

(3) A person who is subject to the notification requirements of this section shall immediately upon his release notify the police of the following information—

(a) his name, and, where he uses one or more other names, each of those names; and

(b) his home address.

(4) A person who is subject to the notification requirements of this section shall immediately upon—

(a) his using a name which has not been notified to the police under subsection (3); or

(b) any change in his home address,

notify that name or that change of address to the police.

(5) Any notification under this section shall be acknowledged in writing in such form as the Minister may direct.

(6) A person who—

(a) fails, without reasonable excuse, to comply with the notification requirements set out in subsection (3) or (4); or

(b) notifies to the police, in purported compliance with those requirements, any information which he knows to be false,

is guilty of an offence and is liable on summary conviction to a fine of $3,000 or imprisonment for six months, or to both.

(7) A certificate issued by the registrar or clerk of the court that a person has been convicted of a sexual offence and of the date of conviction shall be conclusive evidence of those facts.

(8) A certificate of the Commissioner of Prisons that a person was released from prison and the date of release shall be conclusive evidence of those facts.

[Section 329G added by 2000:23 s.2 effective 29 October 2001]

Public notification of information on sex offenders

329H (1) The Minister, having regard to—

(a) the need to protect the public, an affected group of people or an individual; and

(b) the objective of effective management of sex offenders,

shall establish a protocol governing the disclosure of information in relation to sex offenders who are considered to present a risk of significant harm to the health or safety of the public, an affected group of people or an individual.

(2) The protocol shall provide for the following notification options—

(a) no notification;

(b) notification of a specified group of persons;

(c) notification of a specified individual;

(d) notification to the public.

(3) Notification may include such identifying information (including a photograph of the sex offender) as the Minister may determine.

(3A) For the purposes of this section, the Commissioner of Prisons shall notify the Minister of a sex offender's pending release at least two months prior to the release date, and shall indicate whether the person has completed any programmes mandated under section 70QA.

(4) Before determining to give any notification in accordance with the protocol in relation to a particular sex offender the Minister shall consult with the Commissioner of Police.

[Section 329H added by 2000:23 s.2 effective 29 October 2001; Section 329H amended by 2018 : 64 s. 7 effective 7 February 2019]

DIVISION IV

OFFENCES RELATING TO PROPERTY AND CONTRACTS

PART XIX

THEFT, BURGLARY AND COGNATE OFFENCES

[Part XIX (sections 330 to 367) repealed and replaced by new Part XIX (sections 329I to 375) by 2005:15 s.8 effective 1 April 2006]

Chapter 1: Trespass in and around dwelling houses

Trespass in dwelling-house

329I (1) Any person who, without lawful excuse, the proof of which shall be upon him, enters or is found in any dwelling-house or in any building which is adjacent to a dwelling-house and occupied with it but which is not part of it, is guilty of an offence.

(2) A person convicted of an offence under this section is liable—

(a) on summary conviction, to a term of imprisonment of three years; and

(b) on conviction on indictment, to a term of imprisonment of five years.

Prowling etc about dwelling-houses

329J Any person who, without lawful excuse, the proof of which shall be upon him, hovers, lurks or prowls about, or attempts to enter, any dwelling-house, commits an offence and is liable—

(a) on summary conviction, to a term of imprisonment of three years; and

(b) on conviction on indictment, to a term of imprisonment of five years.

Chapter 2: Theft

Interpretation

330 (1) Sections 334(1) and 335(1) shall apply generally for purposes of this Chapter as they apply for purposes of section 331.

(2) For purposes of this Chapter—

"gain" and "loss" are to be construed as extending only to gain or loss in money or other property, but as extending to any such gain or loss whether temporary or permanent; and—

(a) "gain" includes a gain by keeping what one has, as well as a gain by getting what one has not; and

(b) "loss" includes a loss by not getting what one might get, as well as a loss by parting with what one has;

(c) "goods", except in so far as the context otherwise requires, includes money and every other description of property except land, and includes things severed from the land by stealing;

"deception" has the meaning given in section 345.

Definition of "Theft"

Basic definition of theft

331 (1) A person is guilty of theft if he dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it; and "thief" and "steal" shall be construed accordingly.

(2) It is immaterial whether the appropriation is made with a view to gain or is made for the thief's own benefit.

(3) The five following sections shall have effect as regards the interpretation and operation of this section (and, except as otherwise provided by this Act, shall apply only for the purposes of this section).

"Dishonestly"

332 (1) A person's appropriation of property belonging to another is not to be regarded as dishonest—

(a) if he appropriates the property in the belief that he has in law the right to deprive the other of it, on behalf of himself or of a third person; or

(b) if he appropriates the property in the belief that he would have the other's consent if the other knew of the appropriation and the circumstances of it; or

(c) (except where the property came to him as trustee or personal representative) if he appropriates the property in the belief that the person to whom the property belongs cannot be discovered by taking reasonable steps.

(2) A person's appropriation of property belonging to another may be dishonest notwithstanding that he is willing to pay for the property.

"Appropriates"

333 (1) Any assumption by a person of the rights of an owner amounts to an appropriation, and this includes, where he has come by the property (innocently or not) without stealing it any later assumption of a right to it by keeping or dealing with it as owner.

(2) Where property or a right or interest in property is or purports to be transferred for value to a person acting in good faith, no later assumption by him of rights which he believed himself to be acquiring shall, by reason of any defect in the transferor's title, amount to theft of the property.

"Property"

334 (1) Property includes money and all other property, real or personal, including things in action and other intangible property.

(2) A person cannot steal land, or things forming part of land and severed from it by him or by his directions, except in the following cases, that is to say—

(a) when he is a trustee or personal representative, or is authorised by power of attorney, or as liquidator of a company, or otherwise, to sell or dispose of land belonging to another, and he appropriates the land or anything forming part of it by dealing with it in breach of the confidence reposed in him; or

(b) when he is not in possession of the land and appropriates anything forming part of the land by severing it or causing it to be severed, or after it has been severed; or

(c) when, being in possession of the land under a tenancy, he appropriates the whole or part of any fixture or structure let to be used with the land.

(3) A person who picks flowers, fruit or foliage from a plant growing wild on any land, does not (although not in possession of the land) steal what he picks, unless he does it for reward or for sale or other commercial purpose.

(4) Wild creatures, tamed or untamed, shall be regarded as property; but a person cannot steal a wild creature not tamed nor ordinarily kept in captivity, or the carcase of any such creature, unless either it has been reduced into possession by or on behalf of another person and possession of it has not since been lost or abandoned, or another person is in course of reducing it into possession.

(5) For purposes of this section—

"land" does not include incorporeal hereditaments;

"plant" includes any shrub or tree;

"tenancy" means a tenancy for years or any less period and includes an agreement for such a tenancy, but a person who after the end of a tenancy remains in possession [as statutory tenant] or otherwise is to be treated as having possession under the tenancy, and "let" shall be construed accordingly.

"Belonging to another"

335 (1) Property shall be regarded as belonging to any person having possession or control of it, or having in it any proprietary right or interest (not being an equitable interest arising only from an agreement to transfer or grant an interest).

(2) Where property is subject to a trust, the persons to whom it belongs shall be regarded as including any person having a right to enforce the trust, and an intention to defeat the trust shall be regarded accordingly as an intention to deprive of the property any person having that right.

(3) Where a person receives property from or on account of another, and is under an obligation to the other to retain and deal with that property or its proceeds in a particular way, the property or proceeds shall be regarded (as against him) as belonging to the other.

(4) Where a person gets property by another's mistake, and is under an obligation to make restoration (in whole or in part) of the property or its proceeds or of the value thereof, then to the extent of that obligation the property or proceeds shall be regarded (as against him) as belonging to the person entitled to restoration, and an intention not to make restoration shall be regarded accordingly as an intention to deprive that person of the property or proceeds.

(5) Property of a corporation sole shall be regarded as belonging to the corporation notwithstanding a vacancy in the corporation.

"With the intention of permanently depriving the other of it"

336 (1) A person appropriating property belonging to another without meaning the other permanently to lose the thing itself is nevertheless to be regarded as having the intention of permanently depriving the other of it if his intention is to treat the thing as his own to dispose of regardless of the other's rights; and a borrowing or lending of it may amount to so treating it if but only if the borrowing or lending is for a period and in circumstances making it equivalent to an outright taking or disposal.

(2) Without prejudice to the generality of subsection (1) where a person, having possession or control (lawfully or not) of property belonging to another, parts with the property under a condition as to its return which he may not be able to perform, this (if done for purposes of his own and without the other's authority) amounts to treating the property as his own to dispose of regardless of the other's rights.

Theft, Robbery, Burglary, etc.

Theft

337 (1) A person guilty of theft shall be liable on summary conviction to a fine of $10,000 or to imprisonment for five years, or both; and on conviction on indictment to a fine of $100,000 or to imprisonment for ten years, or both.

(2) Notwithstanding subsection (1), where a person is charged with the theft of any article the value of which is $1,000 or less, the court shall proceed as if the offence were triable only summarily.

Robbery

338 (1) A person is guilty of robbery if he steals, and immediately before or at the time of doing so, and in order to do so, he uses force on any person or puts or seeks to put any person in fear of being then and there subjected to force.

(2) A person guilty of robbery, or of an assault with intent to rob, shall be liable on summary conviction to a fine of $10,000 or to imprisonment for five years, or both; and on conviction on indictment to imprisonment for twenty years.

Burglary

339 (1) A person is guilty of burglary if—

(a) he enters any building or part of a building as a trespasser and with intent to commit any such offence as is mentioned in subsection (2); or

(b) having entered any building or part of a building as a trespasser he steals or attempts to steal anything in the building or that part of it or inflicts or attempts to inflict on any person therein any actual bodily harm.

(2) The offences referred to in subsection (1)(a) are offences of stealing anything in the building or part of a building in question, of inflicting on any person therein any actual bodily harm or sexually assaulting any person therein and of doing unlawful damage to the building or anything there.

(3) A person guilty of burglary shall—

(a) on summary conviction be liable to a fine of $10,000 or to imprisonment for five years or to both;

(b) on conviction on indictment be liable to imprisonment as follows—

(i) where the offence was committed in respect of a building or part of a building which is a dwelling, fourteen years;

(ii) in any other case ten years.

(4) References in subsections (1) and (2) to a building and the reference in subsection (3) to a building which is a dwelling, shall apply also to an inhabited vehicle or

vessel and shall apply to any such vehicle or vessel at times when the person having a habitation in it is not there as well as at times when he is.

Aggravated burglary

340 (1) A person is guilty of aggravated burglary if he commits any burglary and at the time has with him any firearm or imitation firearm, any offensive weapon, article with a blade or a point or any explosive; and for this purpose—

(a) "firearm" includes an air gun or air pistol, and "imitation firearm" means anything which has the appearance of being a firearm, whether capable of being discharged or not; and

(b) "offensive weapon" has the meaning given in section 315 (4) ;

(c) "article with a blade or a point" shall be construed in accordance with section 315C (2); and

(d) "explosive" means any article manufactured for the purpose of producing a practical effect by explosion, or intended by the person having it with him for that purpose.

(2) A person guilty of aggravated burglary shall on conviction on indictment be liable to imprisonment for twenty years.

Removal of articles from places open to the public

341 (1) Subject to subsections (2) and (3), where the public have access to a building in order to view the building or part of it, or a collection or part of a collection housed in it, any person who without lawful authority removes from the building or its grounds the whole or part of any article displayed or kept for display to the public in the building or that part of it or in its grounds shall be guilty of an offence.

(2) For this purpose "collection" includes a collection got together for a temporary purpose, but references in this section to a collection do not apply to a collection made or exhibited for the purpose of effecting sales or other commercial dealings.

(3) It is immaterial for purposes of subsection (1), that the public's access to a building is limited to a particular period or particular occasion; but where anything removed from a building or its grounds is there otherwise than as forming part of, or being on loan for exhibition with, a collection intended for permanent exhibition to the public, the person removing it does not thereby commit an offence under this section unless he removes it on a day when the public have access to the building as mentioned in subsection (1).

(4) A person does not commit an offence under this section if he believes that he has lawful authority for the removal of the thing in question or that he would have it if the person entitled to give it knew of the removal and the circumstances of it.

(5) A person guilty of an offence under this section shall, on summary conviction be liable to a fine of $10,000 or imprisonment for five years or both, and on conviction on indictment, to a fine of $50,000 or imprisonment for a term of ten years, or both.

Taking motor vehicle or other conveyance without authority

342 (1) Subject to subsections (5) and (6), a person shall be guilty of an offence if, without having the consent of the owner or other lawful authority, he takes any conveyance for his own or another's use or, knowing that any conveyance has been taken without such authority, drives it or allows himself to be carried in or on it.

(2) A person guilty of an offence under subsection (1) shall be liable on summary conviction to a fine of $5,000 or to imprisonment for two years, or both.

(3) If on the trial of an indictment for theft the jury are not satisfied that the accused committed theft, but it is proved that the accused committed an offence under subsection (1), the jury may find him guilty of the offence under subsection (1) and if he is found guilty of it, he shall be liable as he would have been liable under subsection (2) on summary conviction.

(4) Proceedings for an offence under subsection (1) (but not proceedings of a kind falling within subsection (3)) in relation to a mechanically propelled vehicle—

(a) shall not be commenced after the end of the period of three years beginning with the day on which the offence was committed; but

(b) subject to that may be commenced at any time within the period of six months beginning with the relevant day.

(5) Subsection (1) shall not apply in relation to pedal cycles; but, subject to subsection (6), a person who, without having the consent of the owner or other lawful authority, takes a pedal cycle for his own or another's use, or rides a pedal cycle knowing it to have been taken without such authority, is guilty of an offence and liable on summary conviction to a fine of $1,000.

(6) A person does not commit an offence under this section by anything done in the belief that he has lawful authority to do it or that he would have the owner's consent if the owner knew of his doing it and the circumstances of it.

(7) For purposes of this section—

"conveyance" means any conveyance constructed or adapted for the carriage of a person or persons whether by land, water or air, except that it does not include a conveyance constructed or adapted for use only under the control of a person not carried in or on it, and "drive" shall be construed accordingly;

"owner", in relation to a conveyance which is the subject of a hiring agreement or hire-purchase agreement, means the person in possession of the conveyance under that agreement;

"relevant day" means the day on which sufficient evidence to justify the proceedings came to the knowledge of any person responsible for deciding whether to commence any such prosecution.

Aggravated vehicle-taking

343 (1) Subject to subsection (3), a person is guilty of aggravated taking of a vehicle if—

(a) he commits an offence under section 342(1) (in this section referred to as a "basic offence") in relation to a mechanically propelled vehicle; and

(b) it is proved that, at any time after the vehicle was unlawfully taken (whether by him or another) and before it was recovered, the vehicle was driven, or injury or damage was caused, in one or more of the circumstances set out in paragraphs (a) to (d) of subsection (2).

(2) The circumstances referred to in subsection (1)(b) are—

(a) that the vehicle was driven dangerously on a road or other public place;

(b) that, owing to the driving of the vehicle, an accident occurred by which injury was caused to any person;

(c) that, owing to the driving of the vehicle, an accident occurred by which damage was caused to any property, other than the vehicle;

(d) that it was caused to the vehicle.

(3) A person is not guilty of an offence under this section if he proves that, as regards any such proven driving, injury or damage as is referred to in subsection (1)(b), either—

(a) the driving, accident or damage referred to in subsection (2) occurred before he committed the basic offence; or

(b) he was neither in nor on nor in the immediate vicinity of the vehicle when that driving, accident or damage occurred.

(4) A person guilty of an offence under this section shall be liable on conviction on indictment to imprisonment for five years or, if it is proved that, in circumstances falling within subsection (2)(b), the accident caused the death of the person concerned, for seven years.

(5) If a person who is charged with an offence under this section is found not guilty of that offence but it is proved that he committed a basic offence, he may be convicted of the basic offence.

(6) If by virtue of subsection (5) a person is convicted of a basic offence before the Supreme Court that court shall have the same powers and duties as the Magistrates Court would have had on convicting him of such an offence.

(7) For the purposes of this section a vehicle is driven dangerously if—

(a) it is driven in a way which falls far below what would be expected of a competent and careful driver; and

(b) it would be obvious to a competent and careful driver that driving the vehicle in that way would be dangerous.

(8) For the purposes of this section a vehicle is recovered when it is restored to its owner or to other lawful possession or custody; and in this subsection "owner" has the same meaning as in section 342(7)

Abstracting of electricity

344 A person who dishonestly uses without due authority, or dishonestly causes to be wasted or diverted, any electricity shall be guilty of an offence and liable on summary conviction to a fine of $5,000 or to imprisonment for twelve months, or both; and on conviction on indictment be liable to a fine of $50,000 or imprisonment for two years, or both.

Fraud and blackmail

Obtaining property by deception

345 (1) A person who by any deception dishonestly obtains property belonging to another, with the intention of permanently depriving the other of it shall be guilty of an offence and liable on summary conviction to a fine of $10,000 or to imprisonment for five years, or both; and on conviction on indictment to a fine of $100,000 or imprisonment for ten years, or both.

(2) For purposes of this section a person is to be treated as obtaining property if he obtains ownership, possession or control of it, and obtain includes obtaining for another or enabling another to obtain or to retain.

(3) Section 336 shall apply for purposes of this section with the necessary adaptation of the reference to appropriating, as it applies for purposes of section 331.

(4) For purposes of this section "deception" means any deception (whether deliberate or reckless) by words or conduct as to fact or as to law including a deception as to the present intentions of the person using the deception or any other person.

Obtaining a money transfer by deception

346 (1) A person is guilty of an offence if by any deception he dishonestly obtains a money transfer for himself or another.

(2) A money transfer occurs when—

(a) a debit is made to one account;

(b) a credit is made to another; and

(c) the credit results from the debit or the debit results from the credit.

(3) References to a credit and to a debit are to a credit of an amount of money and to a debit of an amount of money.

(4) It is immaterial (in particular)—

(a) whether the amount credited is the same as the amount debited;

(b) whether the money transfer is effected on presentment of a cheque or by another method;

(c) whether any delay occurs in the process by which the money transfer is effected;

(d) whether any intermediate credits or debits are made in the course of the money transfer;

(e) whether either of the accounts is overdrawn before or after the money transfer is effected.

(5) A person guilty of an offence under this section shall be liable on summary conviction to a fine of $10,000 or to imprisonment for five years, or both; and on conviction on indictment to a fine of $100,000 or imprisonment for ten years or both.

(6) For purposes of this section "account" means an account kept with a deposit taking business within the meaning of section 4 of the Banks and Deposits Companies Act 1999.

Obtaining pecuniary advantage by deception

347 (1) A person who by any deception dishonestly obtains for himself or another any pecuniary advantage shall be guilty of an offence and liable on summary conviction to a fine of $10,000 or to imprisonment for five years, or both; and on conviction on indictment to a fine of $100,000 or to imprisonment for ten years or both.

(2) The cases in which a pecuniary advantage within the meaning of this section is to be regarded as obtained for a person are cases where—

(a) he is allowed to borrow by way of overdraft, or to take out any policy of insurance or annuity contract, or obtains an improvement of the terms on which he is allowed to do so; or

(b) he is given the opportunity to earn remuneration or greater remuneration in an office or employment, or to win money by betting.

(3) For purposes of this section "deception" has the same meaning as in section 345(4).

Obtaining services by deception

348 (1) A person who by any deception dishonestly obtains services from another shall be guilty of an offence and liable on summary conviction to a fine of $10,000 or to imprisonment for five years, or both; and on conviction on indictment to a fine of $100,000 or imprisonment for ten years or both.

(2) It is an obtaining of services where the other is induced to confer a benefit by doing some act, or causing or permitting some act to be done, on the understanding that the benefit has been or will be paid for.

(3) Without prejudice to the generality of subsection (2), it is an obtaining of services where the other is induced to make a loan, or to cause or permit a loan to be made, on the understanding that any payment (whether by way of interest or otherwise) will or has been made in respect of the loan.

Evasion of liability by deception

349 (1) Subject to subsection (2), where a person by any deception—

(a) dishonestly secures the remission of the whole or part of any existing liability to make a payment, whether his own liability or another's;

(b) with intent to make permanent default in whole or in part on any existing liability to make a payment or with intent to let another do so dishonestly induces the creditor or any person claiming payment on behalf of the creditor to wait for payment (whether or not the due date for payment is deferred) or to forgo payment; or

(c) dishonestly obtains any exemption from or abatement of liability to make a payment;

he shall be guilty of an offence and liable on summary conviction to a fine of $10,000 or to imprisonment for five years, or both; and on conviction on indictment a fine of $100,000 or to imprisonment for ten years or both.

(2) For purposes of this section "liability" means legally enforceable liability; and subsection (1) shall not apply in relation to a liability that has not been accepted or established to pay compensation for a wrongful act or omission.

(3) For purposes of subsection (1)(b) a person induced to take in payment a cheque or other security for money by way of conditional satisfaction of a pre-existing liability is to be treated not as being paid but as being induced to wait for payment.

(4) For purposes of subsection (1)(c) "obtains" includes obtaining for another or enabling another to obtain.

Making off without payment

350 (1) Subject to subsection (3), a person who, knowing that payment on the spot for any goods supplied or service done is required or expected from him, dishonestly makes off without having paid as required or expected and with intent to avoid payment of the amount due shall be guilty of an offence and liable on summary conviction to a fine of $10,000 or to imprisonment for two years or both.

(2) For purposes of this section "payment on the spot" includes payment at the time of collecting goods on which work has been done or in respect of which service has been provided.

(3) Subsection (1) shall not apply where the supply of the goods or the doing of the service is contrary to law, or where the service done is such that payment is nor legally enforceable.

False accounting

351 (1) Where a person dishonestly, with a view to gain for himself or another or with intent to cause loss to another—

(a) destroys, defaces, conceals or falsifies any account or any record or document made or required for any accounting purpose; or

(b) in furnishing information for any purpose produces or makes use of any account, or any such record or document as aforesaid which to his

knowledge is or may be misleading, false or deceptive in a material particular;

he shall be guilty of an offence and liable on summary conviction to a fine of $10,000 or imprisonment for five years, or both and on conviction on indictment to a fine of $100,000 or imprisonment for ten years or both.

(2) For purposes of this section a person who makes or concurs in making in an account or other document an entry which is or may be misleading, false or deceptive in a material particular or who omits or concurs in omitting a material particular from an account or other document, is to be treated as falsifying the account or document.

Liability of company officers for certain offences by company

352 (1) Where an offence committed by a body corporate under section 345, 347 or 351 is proved to have been committed with the consent or connivance of any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence, and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, this section shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

False statements by company directors, etc.

353 (1) Where an officer of a body corporate or unincorporated association (or person purporting to act as such), with intent to deceive members or creditors of the body corporate or association about its affairs, publishes or concurs in publishing a written statement or account which to his knowledge is or may be misleading, false or deceptive in a material particular, he shall be guilty of an offence and liable on summary conviction to a fine of $10,000 or imprisonment for five years or both; and on conviction on indictment to a fine of $100,000 or imprisonment for ten years or both.

(2) For purposes of this section a person who has entered into a security for the benefit of a body corporate or association is to be treated as a creditor of it.

(3) Where the affairs of a body corporate or association are managed by its members, this section shall apply to any statement which a member publishes or concurs in publishing in connection with his functions of management as if he were an officer of the body corporate or association.

Suppression, etc. of documents

354 (1) A person who dishonestly, with a view to gain for himself or another or with intent to cause loss to another, destroys, defaces or conceals any valuable security, any will or other testamentary document or any original document of or belonging to, or filed or deposited in, any court of justice or any government department shall on conviction on indictment be liable a fine of $100,000 or to imprisonment for ten years or both.

(2) A person who dishonestly, with a view to gain for himself or another or with intent to cause loss to another, by any deception procures the execution of a valuable

security shall be guilty of an offence and liable on conviction on indictment to a fine of $100,000 or to imprisonment for a term of ten years or both; and this subsection shall apply in relation to the making, acceptance, endorsement, alteration, cancellation or destruction in whole or in part of a valuable security, and in relation to the signing or sealing of any paper or other material in order that it may be made or converted into, or used or dealt with as, a valuable security, as if that were the execution of a valuable security.

(3) For purposes of this section "valuable security" means any document creating, transferring, surrendering or releasing any right to, in or over property, or authorising the payment of money or delivery of any property, or evidencing the creation, transfer, surrender or release of any such right, or the payment of money or delivery of any property, or the satisfaction of any obligation.

Blackmail

355 (1) A person is guilty of blackmail if, with a view to gain for himself or another or with intent to cause loss to another, he makes any unwarranted demand with menaces; and for this purpose a demand with menaces is unwarranted unless the person making it does so in the belief—

(a) that he has reasonable grounds for making the demand; and

(b) that the use of the menaces is a proper means of reinforcing the demand.

(2) The nature of the act or omission demanded is immaterial, and it is also immaterial whether the menaces relate to action to be taken by the person making the demand.

(3) A person guilty of blackmail shall be liable on conviction on indictment to a fine of $250,000 or imprisonment for fourteen years or both.

Offences relating to goods stolen etc.

Handling stolen goods

356 (1) A person handles stolen goods if (otherwise than in the course of the stealing) knowing or believing them to be stolen goods he dishonestly receives the goods, or dishonestly undertakes or assists in their retention, removal, disposal or realisation by or for the benefit of another person, or if he arranges to do so.

(2) A person guilty of handling stolen goods shall be liable on summary conviction to a fine of $10,000 or to imprisonment for five years or both; and on conviction on indictment to a fine of $150,000 or imprisonment for fourteen years, or both.

Advertising rewards for return of goods stolen or lost

357 Where any public advertisement of a reward for the return of any goods which have been stolen or lost uses any words to the effect that no questions will be asked, or that the person producing the goods will be safe from apprehension or inquiry, or that

money paid for the purchase of the goods or advanced by way of loan on them will be repaid, the person advertising the reward and any person who prints or publishes the advertisement shall be guilty of an offence and liable on summary conviction to a fine of $5,000.

Scope of offences relating to stolen goods

358 (1) The provisions of this Chapter relating to goods which have been stolen shall apply whether the stealing occurred in Bermuda or elsewhere, and whether it occurred before or after the commencement of this Chapter, provided that the stealing (if not an offence under this Chapter) amounted to an offence where and at the time when the goods were stolen; and references to stolen goods shall be construed accordingly.

(2) For purposes of those provisions references to stolen goods shall include, in addition to the goods originally stolen and parts of them (whether in their original state or not)—

(a) any other goods which directly or indirectly represent or have at any time represented the stolen goods in the hands of the thief as being the proceeds of any disposal or realisation of the whole or part of the goods stolen or of goods so representing the stolen goods; and

(b) any other goods which directly or indirectly represent or have at any time represented the stolen goods in the hands of a handler of the stolen goods or any part of them as being the proceeds of any disposal or realisation of the whole or part of the stolen goods handled by him or of goods so representing them.

(3) But no goods shall be regarded as having continued to be stolen goods after they have been restored to the person from whom they were stolen or to other lawful possession or custody or after that person and any other person claiming through him have otherwise ceased as regards those goods to have any right to restitution in respect of the theft.

(4) For purposes of the provisions of this Chapter relating to goods which have been stolen (including subsections (1) to (3)) goods obtained in Bermuda or elsewhere either by blackmail or in the circumstances described in section 345(1) shall be regarded as stolen and "steal", "theft" and "thief" shall be construed accordingly.

Dishonestly retaining a wrongful credit

359 (1) A person is guilty of an offence if—

(a) a wrongful credit has been made to an account kept by him or in respect of which he has any right or interest;

(b) he knows or believes that the credit is wrongful; and

(c) he dishonestly fails to take such steps as are reasonable in the circumstances to secure that the credit is cancelled.

(2) References to a credit are to a credit of an amount of money.

(3) A credit to an account is wrongful if it is the credit side of a money transfer obtained contrary to section 346.

(4) A credit to an account is also wrongful to the extent that it derives from—

(a) theft;

(b) an offence under section 346;

(c) blackmail; or

(d) stolen goods.

(5) In determining whether a credit to an account is wrongful, it is immaterial (in particular) whether the account is overdrawn before or after the credit is made.

(6) A person guilty of an offence under this section shall be liable on summary conviction to a fine of $10,000 or to imprisonment for five years, or both and on conviction on indictment to a fine of $100,000 or imprisonment for ten years or both.

(7) Subsection (8) applies for purposes of provisions of this Chapter relating to stolen goods (including subsection (4)).

(8) References to stolen goods include money which is dishonestly withdrawn from an account to which a wrongful credit has been made, but only to the extent that the money derives from the credit.

(9) In this section—

"account" has the same meaning as in section 346(6);

"money" includes money expressed in a currency other than the Bermuda dollar.

Possession of house breaking implements, etc.

Going equipped for stealing, etc.

360 (1) A person shall be guilty of an offence if, when not at his place of abode, he has with him any article for use in the course of or in connection with any burglary, theft or cheat.

(2) A person guilty of an offence under this section shall on summary conviction be liable to a fine of $5,000 or to imprisonment for two years and on conviction on indictment to a fine of $20,000 or imprisonment for six years or both.

(3) Where a person is charged with an offence under this section, proof that he had with him any article made or adapted for use in committing a burglary, theft or cheat shall be evidence that he had it with him for such use.

(4) For purposes of this section an offence under section 342(1) of taking a conveyance shall be treated as theft, and "cheat" means an offence under section 345.

Enforcement and procedure

Search for stolen goods

361 (1) If it appears to a magistrate, from information given him on oath, that there is reasonable cause to believe that any person has in his custody or possession or on his premises any stolen goods, the magistrate may grant a warrant to search for and seize the same.

(2) Where under this section a person is authorised to search premises for stolen goods, he may enter and search the premises accordingly, and may seize any goods he believes to be stolen goods.

(3) This section is to be construed in accordance with section 358.

Evidence and procedure on charge of theft or handling stolen goods

362 (1) Any number of persons may be charged in one indictment, with reference to the same theft, with having at different times or at the same time handled all or any of the stolen goods, and the persons so charged may be tried together.

(2) On the trial of two or more persons indicted for jointly handling any stolen goods the jury may find any of the accused guilty if the jury are satisfied that he handled all or any of the stolen goods, whether or not he did so jointly with the other accused or any of them.

(3) Where a person is being proceeded against for handling stolen goods (but not for any offence other than handling stolen goods) then at any stage of the proceedings, if evidence has been given of his having or arranging to have in his possession the goods the subject of the charge, or of his undertaking or assisting in, or arranging to undertake or assist in, their retention, removal disposal or realisation, the following evidence shall be admissible for the purpose of proving that he knew or believed the goods to be stolen goods—

(a) evidence that he has had in his possession or has undertaken or assisted in the retention, removal, disposal or realisation of stolen goods from any theft taking place not earlier than twelve months before the offence charged; and

(b) (provided that seven days' notice in writing has been given to him of the intention to prove the conviction) evidence that he has within the five years preceding the date of the offence charged been convicted of theft or of handling stolen goods.

(4) In any proceedings for the theft of anything in the course of transmission (whether by post or otherwise), or for handling stolen goods from such a theft, a statutory declaration made by any person that he despatched or received or failed to receive any goods or postal packet, or that any goods or postal packet when despatched or received by him were in a particular state or condition shall be admissible as evidence of the facts stated in the declaration subject to the following conditions—

(a) a statutory declaration shall be in such form as may be prescribed by the Minister, by order subject to negative resolution procedure;

(b) a statutory declaration shall only be admissible where and to the extent to which oral evidence to the like effect would have been admissible in the proceedings; and

(c) a statutory declaration shall only be admissible if at least seven days before the hearing or trial a copy of it has been given to the person charged, and he has not at least three days before the hearing or trial or within such further time as the court may in special circumstances allow, give the prosecution written notice requiring the attendance at the hearing or trial of the person making the declaration.

(5) Where the proceedings mentioned in subsection (4) are proceedings before the Magistrates' Court inquiring into an offence as examining magistrate that subsection shall have effect with the omission of paragraphs (b) and (c).

(6) This section is to be construed in accordance with section 358; and in subsection (3)(b) the reference to handling stolen goods shall include any corresponding offence committed before the commencement of this Chapter.

(7) In subsection (5) the expression "Magistrates' Court inquiring into an offence as examining magistrates" means a magistrate conducting an examination of witnesses on an information for an indictable offence under the Indictable Offences Act 1929.

[Section 362 subsection (4)(a) amended by 2010 : 5 s. 8 effective 19 March 2010]

General and consequential provisions

Husband and wife

363 (1) This Chapter shall apply in relation to the parties to a marriage, and to property belonging to the wife or husband whether or not by reason of an interest derived from the marriage, as it would apply if they were not married and any such interest subsisted independently of the marriage.

(2) Subject to subsection (3), a person shall have the same right to bring proceedings against that person's wife or husband for any offence (whether under this Chapter or otherwise) as if they were not married.

(3) Proceedings shall not be instituted against a person for any offence of stealing or doing unlawful damage to property which at the time of the offence belongs to that person's wife or husband, or for any attempt, incitement or conspiracy to commit such an offence, unless the proceedings are instituted by or with the consent of the Director of Public Prosecutions:

Provided that this subsection shall not apply to proceedings against a person for an offence—

(a) if that person is charged with committing the offence jointly with the wife or husband; or

(b) if by virtue of any judicial decree or order (wherever made) that person and the wife or husband are at the time of the offence under no obligation to cohabit.

(4) Subsection (3) shall apply—

(a) to an arrest (if without warrant) made by the wife or husband; and

(b) to a warrant of arrest issued on an information laid by the wife or husband.

Effect on civil proceedings and rights

364 (1) A person shall not be excused, by reason that to do so may incriminate that person or the wife or husband of that person of an offence under this Chapter—

(a) from answering any question put to that person in proceedings for the recovery or administration of any property, for the execution of any trust or for an account of any property or dealings with property; or

(b) from complying with any order made in any such proceedings;

but no statement or admission made by a person in answering a question put or complying with an order made as aforesaid shall, in proceedings for an offence under this Chapter, be admissible in evidence against that person or (unless they married after the making of the statement or admission) against the wife or husband of that person.

(2) Notwithstanding any enactment to the contrary, where property has been stolen or obtained by fraud or other wrongful means the title to that or any other property shall not be affected by reason only of the conviction of the offender.

Chapter 3: Forgery and kindred offences

Interpretation of Chapter 3

Meaning of "instrument"

365 (1) Subject to subsection (2), in this Chapter "instrument" means—

(a) any document, whether of a formal or informal character;

(b) any stamp issued or sold by the post office;

(c) any Revenue stamp; and

(d) any disc, tape, sound track or other device on or in which information is recorded or stored by mechanical, electronic or other means.

(2) A currency note within the meaning of section 163(1) is not an instrument for the purposes of this Chapter.

(3) A mark denoting payment of postage which the post office authorises to be used instead of an adhesive stamp is to be treated for the purposes of this Chapter as if it were a stamp issued by the post office.

(4) In this Chapter Revenue stamp means a stamp as defined in section 1 of the Stamp Duties Act 1976.

Meaning of "false" and "making"

366 (1) An instrument is false for the purposes of this Chapter—

(a) if it purports to have been made in the form in which it is made by a person who did not in fact make it in that form; or

(b) if it purports to have been made in the form in which it is made on the authority of a person who did not in fact authorise its making in that form;

(c) if it purports to have been made in the terms in which it is made by a person who did not in fact make it in those terms;

(d) if it purports to have been made in the terms in which it is made on the authority of a person who did not in fact authorise its making in those terms;

(e) if it purports to have been altered in any respect by a person who did not in fact alter it in that respect;

(f) if it purports to have been altered in any respect on the authority of a person who did not in fact authorise the alteration in that respect;

(g) if it purports to have been made or altered on a date on which or at a place at which or otherwise in circumstances in which it was not in fact made or altered; or

(h) if it purports to have been made or altered by an existing person but he did not in fact exist.

(2) A person is to be treated for the purposes of this Chapter as making a false instrument if he alters an instrument so as to make it false in any respect (whether or not it is false in some other respect apart from that alteration).

Meaning of "prejudice" and "induce"

367 (1) Subject to subsections (2) and (4), for the purposes of this Chapter an act or omission intended to be induced is to a person's prejudice if, and only if, it is one which, if it occurs—

(a) will result—

(i) in his temporary or permanent loss of property;

(ii) in his being deprived of an opportunity to earn remuneration or greater remuneration; or

(iii) in his being deprived of an opportunity to gain a financial advantage otherwise than by way of remuneration; or

(b) will result in somebody being given an opportunity—

(i) to earn remuneration or greater remuneration from him; or

(ii) to gain a financial advantage from him otherwise than by way of remuneration; or

(c) will be the result of his having accepted a false instrument as genuine, or a copy of a false instrument as a copy of a genuine one, in connection with his performance of any duty.

(2) An act which a person has an enforceable duty to do and an omission to do an act which a person is not entitled to do shall be disregarded for the purposes of this Chapter.

(3) In this Chapter, references to inducing somebody to accept a false instrument as genuine, or a copy of a false instrument as a copy of a genuine one, include references to inducing a machine to respond to the instrument or copy as if it were a genuine instrument or, as the case may be, a copy of a genuine one.

(4) Where subsection (3) applies, the act or omission intended to be induced by the machine responding to the instrument or copy shall be treated as an act or omission to a person's prejudice.

(5) In this section, "loss" includes not getting what one might get as well as parting with what one has.

Offences

The offence of forgery

368 A person is guilty of forgery if he makes a false instrument, with the intention that he or another shall use it to induce somebody to accept it as genuine, and by reason of so accepting it to do or not to do some act to his own or any other person's prejudice.

The offence of copying a false instrument

369 It is an offence for a person to make a copy of an instrument which is, and which he knows or believes to be, a false instrument, with the intention that he or another shall use it to induce somebody to accept it as a copy of a genuine instrument, and by reason of so accepting it to do or not to do some act to his own or any other person's prejudice.

The offence of using a false instrument

370 It is an offence for a person to use an instrument which is, and which he knows or believes to be, false, with the intention of inducing somebody to accept it as genuine and by reason of so accepting it to do or not to do some act to his own or any other person's prejudice.

The offence of using a copy of a false instrument

371 It is an offence for a person to use a copy of an instrument which is, and which he knows or believes to be, a false instrument, with the intention of inducing somebody

to accept it as a copy of a genuine instrument and by reason of so accepting it to do or not to do some act to his own or any other person's prejudice.

Offences relating to money orders, share certificates, passports, etc.

372 (1) It is an offence for a person to have in his custody or under his control an instrument to which this section applies which is, and which he knows or believes to be, false, with the intention that he or another shall use it to induce somebody to accept it as genuine, and by reason of so accepting it to do or not to do some act to his own or any other person's prejudice.

(2) It is an offence for a person to have in his custody or under his control, without lawful authority or excuse, an instrument to which this section applies which is, and which he knows or believes to be, false.

(3) It is an offence for a person to make or to have in his custody or under his control a machine or implement, or paper or any other material, which to his knowledge is or has been specially designed or adapted for the making of an instrument to which this section applies, with the intention that he or another shall make an instrument to which this section applies which is false and that he or another shall use the instrument to induce somebody to accept it as genuine, and by reason of so accepting it to do or not to do some act to his own or any other person's prejudice.

(4) It is an offence for a person to make or to have in his custody or under his control any such machine, implement, paper or material, without lawful authority or excuse.

(5) The instruments to which this section applies are—

(a) money orders;

(b) postal orders;

(c) Bermuda postage stamps;

(d) Revenue stamps;

(e) share certificates;

(f) passports and documents which can be used instead of passports;

(g) cheques;

(h) travellers' cheques;

(j) debit cards;

(k) credit cards;

(l) certified copies relating to an entry in a register of births, adoptions, marriages or deaths and issued by the Registrar General, a registration officer or a person lawfully authorised to register marriages; and

(m) certificates relating to entries in such registers.

(6) In subsection (5)(e) "share certificate" means an instrument entitling or evidencing the title of a person to a share or interest—

(a) in any public stock, annuity, fund or debt of any government or state, including a state which forms part of another state; or

(b) in any stock, fund or debt of a body (whether corporate or unincorporated established in Bermuda or elsewhere.

Penalties, etc.

Penalties for offences under this Chapter

373 A person guilty of an offence under this chapter shall be liable on summary conviction to a fine of $10,000 or to imprisonment for five years, or both, and on conviction on indictment to a fine of $100,000 or to imprisonment for ten years, or both.

Powers of search, forfeiture, etc.

374 (1) If it appears to a magistrate, from information given him on oath, that there is reasonable cause to believe that a person has in his custody or under his control—

(a) any thing which he or another has used, whether before or after the coming into force of this Chapter, or intends to use, for the making of any false instrument or copy of a false instrument, in contravention of section 368 or 369; or

(b) any false instrument or copy of a false instrument which he or another has used, whether before or after the coming into force of this Chapter, or intends to use, in contravention of section 370 or 371; or

(c) any thing custody or control of which without lawful authority or excuse is an offence under section 372;

the magistrate may issue a warrant authorising a police officer to search for and seize the object in question, and for that purpose to enter any premises specified in the warrant.

(2) A police officer may at any time after the seizure of any object suspected of falling within paragraph (a), (b) or (c) of subsection (1) (whether the seizure was effected by virtue of a warrant under that subsection or otherwise) apply to the Magistrates' Court for an order under this subsection with respect to the object; and the court, if it is satisfied both that the object in fact falls within any of those paragraphs and that it is conducive to the public interest to do so, may make such order as it thinks fit for the forfeiture of the object and its subsequent destruction or disposal.

(3) Subject to subsection (4), the court by or before which a person is convicted of an offence under this Chapter may order any object shown to the satisfaction of the court to relate to the offence to be forfeited and either destroyed or dealt with in such other manner as the court may order.

(4) The court shall not order any object to be forfeited under subsection (2) or (3) where a person claiming to be the owner of or otherwise interested in it applies to be

heard by the court, unless an opportunity has been given to him to show cause why the order should not be made.

Power of arrest

375 Every offence under this Part is an offence for which an offender may be arrested without warrant, and the provisions of section 454 shall apply to all such offences.

[Part XIX (sections 330 to 367) repealed and replaced by new Part XIX (sections 329I to 375) by 2005:15 s.8 effective 1 April 2006. See 2005:15 s.13 (construction of references to offences)]

PART XX

JURISDICTION

[Part XX (sections 368 to 391) repealed and replaced by new Part XX (sections 376 to 382) by 2005:15 s.8 effective 1 April 2006; Part XX (sections 368 to 391) repealed and replaced by new Part XX (sections 376 to 382) by 2005:15 s.8 effective 1 April 2006]

Offences to which this Part applies

376 (1) This Part applies to two groups of offences—

(a) any offence mentioned in subsection (2) (a "Group A offence"); and

(b) any offence mentioned in subsection (3) (a "Group B offence").

(2) The Group A offences are—

(a) an offence under any of the following provisions of Part XIX—

section 331 (theft);

section 345 (obtaining property by deception);

section 346 (obtaining a money transfer by deception);

section 347 (obtaining pecuniary advantage by deception);

section 348 (obtaining services by deception);

section 349 (avoiding liability by deception);

section 351 (false accounting);

section 353 (false statements by company directors, etc.);

section 354(2) (procuring execution of valuable security by deception);

section 355 (blackmail);

section 356 (handling stolen goods);

section 359 (dishonestly retaining wrongful credit);

section 368 (forgery);

section 369 (copying a false instrument);

section 370 (using a false instrument);

section 371 (using a copy of a false instrument);

section 372 (offences which relate to money orders, share certificates, passports, etc.).

(3) The Group B offences are—

(a) conspiracy to commit a Group A offence;

(b) conspiracy to defraud;

(c) attempting to commit a Group A offence;

(d) incitement to commit a Group A offence.

(4) The Minister may by order subject to affirmative resolution procedure amend subsection (2) or (3) by adding or removing any offence

[Section 376 subsection (4) amended by 2010 : 5 s. 9 effective 19 March 2010]

Jurisdiction in respect of Group A offences

377 (1) For the purposes of this Part, "relevant event" , in relation to any Group A offence, means any act or omission or other event (including any result of one or more acts or omissions) proof of which is required for conviction of the offence.

(2) For the purpose of determining whether or not a particular event is a relevant event in relation to a Group A offence, any question as to where it occurred is to be disregarded.

(3) A person may be guilty of a Group A offence if any of the events which are relevant events in relation to the offence occurred in Bermuda.

Questions immaterial to jurisdiction in the case of certain offences

378 (1) A person may be guilty of a Group A or Group B offence whether or not—

(a) he was a British citizen at any material time; or

(b) he was in Bermuda at any such time.

(2) On a charge of conspiracy to commit a Group A offence, or on a charge of conspiracy to defraud in Bermuda, the defendant may be guilty of the offence whether or not—

(a) he became a party to the conspiracy in Bermuda; or

(b) any act or omission or other event in relation to the conspiracy occurred in Bermuda.

(3) On a charge of attempting to commit a Group A offence, the defendant may be guilty of the offence whether or not—

(a) the attempt was made in Bermuda; or

(b) it had an effect in Bermuda.

(4) Subsection (1)(a) does not apply where jurisdiction is given to try the offence in question by an enactment which makes provision by reference to the nationality of the person charged.

Rules for determining certain jurisdictional questions relating to the location of events

379 In relation to a Group A or Group B offence—

(a) there is an obtaining of property in Bermuda if the property is either despatched from or received at a place in Bermuda; and

(b) there is a communication in Bermuda of any information, instruction, request, demand or other matter if it is sent by any means—

(i) from a place in Bermuda to a place elsewhere; or

(ii) from a place elsewhere to a place in Bermuda.

Conspiracy, attempt and incitement

380 (1) A person may be guilty of conspiracy to defraud if—

(a) a party to the agreement constituting the conspiracy, or a party's agent, did anything in Bermuda in relation to the agreement before its formation; or

(b) a party to it became a party in Bermuda (by joining it either in person or through an agent); or

(c) a party to it, or a party's agent, did or omitted anything in Bermuda in pursuance of it,

and the conspiracy would be triable in Bermuda but for the fraud which the parties to it had in view not being intended to take place in Bermuda.

(2) A person may be guilty of incitement to commit a Group A offence if the incitement—

(a) takes place in Bermuda; and

(b) would be triable in Bermuda but for what the person charged had in view not being an offence triable in Bermuda.

(3) Subsections (1) and (2) are subject to section 381.

Relevance of external law

381 (1) A person is guilty of an offence triable by virtue of section 380(1), only if the pursuit of the agreed course would at some stage involve—

(a) an act or omission by one or more of the parties; or

(b) the happening of some other event,

constituting an offence under the law in force where the act, omission or other event was intended to take place.

(2) A person is guilty of an offence triable by virtue of section 380(2), only if what he had in view would involve the commission of an offence under the law in force where the whole or any part of it was intended to take place.

(3) Conduct punishable under the law in force in any place is an offence under that law for the purposes of this section, however it is described in that law.

(4) Subject to subsection (6), a condition specified in subsection (1) or (2) shall be taken to be satisfied unless, not later than rules of court may provide, the defence serve on the prosecution a notice—

(a) stating that, on the facts as alleged with respect to the relevant conduct, the condition is not in their opinion satisfied;

(b) showing their grounds for that opinion; and

(c) requiring the prosecution to show that it is satisfied.

(5) In subsection (4) "the relevant conduct" means—

(a) where the condition in subsection (1) is in question, the agreed course of conduct; and

(b) where the condition in subsection (2) is in question, what the defendant had in view.

(6) The court, if it thinks fit, may permit the defence to require the prosecution to show that the condition is satisfied without the prior service of a notice under subsection (4).

(7) In the Supreme Court, the question whether the condition is satisfied shall be decided by the judge alone.

Application

382 Nothing in any provision in this Part applies to any act, omission or other event occurring before the coming into force of that provision.

PART XXI

CORRUPTION; FRAUD; FALSE ACCOUNTING; AND OFFENCES RELATING TO BANKRUPTCY

Corrupt practices

392 (1) Any person—

(a) who, being an agent, corruptly accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gift or consideration as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, any act in relation

to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business; or

(b) who corruptly gives or agrees to give or offers any gift or consideration to any agent as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, any act in relation to his principal's affairs or business or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business; or

(c) who knowingly gives to any agent or who, being an agent, knowingly uses with intent to deceive his principal, any receipt, account or other document in respect of which the principal is interested, and which contains any statement which is false or erroneous or defective in any material particular, and which to his knowledge is intended to mislead the principal,

is guilty of an offence, and is liable on summary conviction to a fine of $50,000 or to imprisonment for five years, or both; and on conviction on indictment to an unlimited fine or imprisonment for ten years, or both.

(2) A prosecution for an offence under this section shall not be instituted without the consent of the Director of Public Prosecutions.

(3) In this section—

(a) "agent" includes any person employed by, or acting for, another person; and any person serving under the Crown, or under any municipal corporation, or church vestry or parish vestry, is an agent within the meaning of this section;

(b) "consideration" includes any valuable consideration of any kind; and

(c) "principal" includes an employer.

(4) No person shall be charged with an offence under subsection (1) committed wholly on or after the commencement date of the Bribery Act 2016.

[Section 392 subsection (2) amended by 1999:8 s.2 & Sch 1 effective 1 April 1999; subsection (1) amended by 2013 : 30 s. 16 effective 8 November 2013; subsection (4) inserted by 2016 : 47 s. 24(1) & Sch 2 effective 1 September 2017]

Conspiring to defraud

393 Any person who conspires with another person by deceit or any fraudulent means—

(a) to affect the market price of anything publicly sold; or

(b) to defraud the public, or any person, whether a particular person or not; or

(c) to extort any property from any person,

is guilty of a misdemeanour, and is liable on conviction by a court of summary jurisdiction to imprisonment for twelve months and on conviction on indictment to imprisonment for two years.

Fraudulent disposal of trust property by trustee

394 (1) Any person who, being a trustee of any property—

(a) destroys the property with intent to defraud; or

(b) with intent to defraud converts the property to any uses not authorized by the trust,

is guilty of a misdemeanour, and is liable on conviction by a court of summary jurisdiction to imprisonment for twelve months and on conviction on indictment to imprisonment for two years.

(2) No prosecution shall be instituted for an offence under this section without the sanction of the Director of Public Prosecutions.

(3) If civil proceedings have been taken against a trustee in respect of any act done by him, which constitutes an offence under this section, he cannot be afterwards prosecuted for the same cause, as for an offence, on the complaint of the person by whom the civil proceedings were taken, without the consent of the court or judge before whom the civil proceedings were had or are pending.

(4) It is a defence to a charge of any of the offences constituted by subsection (1) to prove that the accused person, before being charged with the offence, and in consequence of the compulsory process of a court in an action or proceeding instituted in good faith by a party aggrieved, or in a compulsory examination or deposition before a court, disclosed on oath the act alleged to constitute the offence.

(5) A person is not entitled to refuse to answer any question or interrogatory in any civil proceeding in any court on the ground that his doing so might tend to show that he had committed any offence constituted by subsection (1).

(6) No conviction for any offence constituted by subsection (1) shall be received in evidence against the person convicted in any civil cause or matter.

(7) For the purposes of this section "trustee" includes the following persons and no others, that is to say—

(a) trustees upon express trusts created by a deed, will, or instrument in writing, whether for a public or private or charitable purpose;

(b) trustees appointed by or under the authority of an Act for any such purpose;

(c) persons upon whom the duties of any such trust as aforesaid devolve;

(d) executors and administrators; or

(e) liquidators, trustees, and other like officers, acting under any provision of law relating to joint stock companies, bankruptcy, or insolvency, by whomsoever appointed or elected.

[Section 394 subsection (2) amended by 1999:8 s.2 & Sch 1 effective 1 April 1999]

Frauds by officials of corporations and companies

395 (1) Any person—

(a) who, being a director or officer of a corporation or company, receives or possesses himself as such of any of the property of the corporation or company otherwise than in payment of a just debt or demand, and, with intent to defraud, omits either to make a full and true entry thereof in the books and accounts of the corporation or company, or to cause or direct such an entry to be made therein; or

(b) who, being a director, officer, or member of a corporation or company, does any of the following acts, with intent to defraud—

(i) destroys, alters, mutilates, or falsifies any book, document, valuable security, or account, which belongs to the corporation or company, or any entry in any such book, document, or account, or is privy to any such act; or

(ii) makes, or is privy to making, any false entry in any such book, document, or account; or

(iii) omits, or is privy to omitting, any material particular from any such book, document, or account,

is guilty of a misdemeanour, and is liable on conviction by a court of summary jurisdiction to imprisonment for twelve months and on conviction on indictment to imprisonment for two years.

(2) It is a defence to a charge of any of the offences constituted by subsection (1) to prove that the accused person, before being charged with the offence, and in consequence of the compulsory process of a court in an action or proceeding instituted in good faith by a party aggrieved, or in a compulsory examination or deposition before a court, disclosed on oath the act alleged to constitute the offence.

(3) A person is not entitled to refuse to answer any question or interrogatory in any civil proceeding in any court on the ground that his so doing might tend to show that he had committed any offence constituted by subsection (1).

(4) No conviction for any offence constituted by subsection (1) shall be received in evidence against the person convicted in any civil cause or matter.

False statements by officials of corporations and companies

396 (1) Any person who, being a promoter, director, officer, or auditor of a corporation or company, either existing or intended to be formed, makes, circulates, or publishes, or concurs in making, circulating or publishing, any written statement or

account which, in any material particular, is to his knowledge false, with intent thereby to effect any of the following purposes—

(a) to deceive or defraud any member, shareholder, or creditor, of the corporation or company, whether a particular person or not;

(b) to induce any person, whether a particular person or not, to become a member of, or to intrust or advance any property to, the corporation or company, or to enter into any security for the benefit thereof,

is guilty of a misdemeanour, and is liable on conviction by a court of summary jurisdiction to imprisonment for twelve months and on conviction on indictment to imprisonment for two years.

(2) It is a defence to a charge of any of the offences constituted by subsection (1) to prove that the accused person, before being charged with the offence, and in consequence of the compulsory process of a court in an action or proceeding instituted in good faith by a party aggrieved, or in a compulsory examination or deposition before a court, disclosed on oath the act alleged to constitute the offence.

(3) A person is not entitled to refuse to answer any question or interrogatory in any civil proceeding in any court on the ground that his so doing might tend to show that he had committed any offence constituted by subsection (1).

(4) No conviction for any offence constituted by subsection (1) shall be received in evidence against the person convicted in any civil cause or matter.

Fraudulent false accounting by clerk or servant

397 (1) Any person who, being a clerk or servant, or being employed or acting in the capacity of a clerk or servant, does any of the following acts with intent to defraud—

(a) destroys, alters, mutilates, or falsifies, any books, document, valuable security, or account, which belongs to or is in possession of his employer, or which has been received by him on account of his employer, or any entry in any such book, document, or account, or is privy to any such act; or

(b) makes, or is privy to making, any false entry in any such book, document, or account as aforesaid; or

(c) omits, or is privy to omitting, any material particular from any such book, document, or account as aforesaid,

is guilty of a misdemeanour, and is liable on conviction by a court of summary jurisdiction to imprisonment for twelve months and on conviction on indictment to imprisonment for two years.

(2) No conviction for any offence constituted by this section shall be received in evidence against the person convicted in any civil cause or matter.

False accounting by public officers

398 (1) Any person who, being an officer charged with the receipt, custody, or management, of any part of the public revenue or property, knowingly furnishes any false statement or return of any money or property received by him or entrusted to his care, or of any balance of money or property in his possession or under his control, is guilty of a misdemeanour, and is liable on conviction by a court of summary jurisdiction to imprisonment for twelve months and on conviction on indictment to imprisonment for two years.

(2) No conviction for any offence constituted by this section shall be received in evidence against the person convicted in any civil cause or matter.

Personating owner of portion of public debt

399 Any person who, with intent to defraud, falsely represents himself—

(a) to be the owner of any share or interest in any portion of the public debt of Bermuda; or

(b) to be the owner of any debt guaranteed by the Government of Bermuda; or

(c) to be the owner of any dividend or money payable in respect of any such share or interest,

is guilty of a felony, and is liable to imprisonment for five years.

Absconding etc with property before or after bankruptcy

400 *[Repealed by 1989:58 effective 31 January 1990]*

Frauds of bankrupts etc

401 *[Repealed by 1989:58 effective 31 January 1990]*

Fraudulently obtaining credit

402 *[Repealed by 1989:58 effective 31 January 1990]*

Making false claims etc in connection with bankruptcy

403 *[Repealed by 1989:58 effective 31 January 1990]*

Fraudulent inducement to invest or deposit

404 Any person who, by any statement, promise or forecast which he knows to be misleading, false or deceptive, or by any dishonest concealment of material facts, or by the reckless making (dishonestly or otherwise) of any statement, promise or forecast which is misleading, false or deceptive, induces or attempts to induce another person—

(a) to invest money on deposit with him or with any other person; or

(b) to enter into or offer to enter into any agreement for that purpose,

shall be guilty of an offence, and liable on conviction by a court of summary jurisdiction to imprisonment for twelve months and on conviction on indictment to imprisonment for seven years.

Misleading statements and practices

405 (1) This subsection applies to a person who—

(a) makes a statement, promise or forecast which he knows to be misleading, false or deceptive in a material particular;

(b) dishonestly conceals any material facts whether in connection with a statement, promise or forecast made by him or otherwise; or

(c) recklessly makes (dishonestly or otherwise) a statement, promise or forecast which is misleading, false or deceptive in a material particular.

(2) A person to whom subsection (1) applies is guilty of an offence if he makes the statement, promise or forecast or conceals the facts for the purpose of inducing, or is reckless as to whether it may induce, another person (whether or not he is the person to whom the statement, promise or forecast is made)—

(a) to enter or offer to enter into, or to refrain from entering or offering to enter into, a relevant agreement; or

(b) to exercise, or refrain from exercising, any rights conferred by a relevant investment.

(3) Subsections (1) and (2) do not apply unless—

(a) the statement, promise or forecast is made in or from, or the facts are concealed in or from, Bermuda or arrangements are made in or from Bermuda for the statement, promise or forecast to be made or the facts to be concealed;

(b) the person on whom the inducement is intended to or may have effect is in Bermuda; or

(c) the agreement is or would be entered into or the rights are or would be exercised in Bermuda.

(4) A person guilty of an offence under this section is liable—

(a) on summary conviction, to a fine of $10,000 or to imprisonment for six months or both;

(b) on conviction on indictment, to a fine of $100,000, or to imprisonment for five years or both.

(5) "Relevant agreement" means an agreement—

(a) the entering into or performance of which by either party constitutes an investment activity within the meaning of section 3(2) of the Investment Business Act 2003; and

(b) which relates to a relevant investment.

(6) "Relevant investment" means an investment within the meaning of section 3(1)(a) of the Investment Business Act 2003.

[Section 405 repealed and replaced by 2004:24 s.3 effective 1 November 2004]

Market manipulation

405A (1) Any person who does any act or engages in any course of conduct which creates a false or misleading impression as to the market in or the price or value of any relevant investments is guilty of an offence if he does so for the purpose of creating that impression and of thereby inducing another person to acquire, dispose of, subscribe for or underwrite those investments or to refrain from doing so or to exercise, or refrain from exercising, any rights conferred by those investments.

(2) In proceedings brought against any person for an offence under subsection (1) it is a defence for him to show that he reasonably believed that his act or conduct would not create an impression that was false or misleading as to the matters mentioned in that subsection.

(3) Subsection (1) does not apply unless—

(a) the act is done, or the course of conduct is engaged in, in Bermuda; or

(b) the false or misleading impression is created in Bermuda.

(4) "Relevant investment" means an investment within the meaning of section 3(1)(a) of the Investment Business Act 2003 which is listed on the Bermuda Stock Exchange, or any other exchange in Bermuda in relation to which a recognition order is in force under the Investment Business Act 2003.

(5) A person guilty of an offence under this section is liable—

(a) on summary conviction, to a fine of $10,000 or to imprisonment for six months or both;

(b) on conviction on indictment, a fine of $100,000 or to imprisonment for five years or both.

[Section 405A inserted by 2004:24 s.4 effective 1 November 2004]

The offence of insider dealing

The offence

405B (1) An individual who has information as an insider is guilty of insider dealing if, in the circumstances mentioned in subsection (3), he deals in investments that are price-affected investments in relation to the information.

(2) An individual who has information as an insider is also guilty of insider dealing if—

(a) he encourages another person to deal in investments that are (whether or not that other knows it) price-affected investments in relation to the

information, knowing or having reasonable cause to believe that the dealing would take place in the circumstances mentioned in subsection (3); or

(b) he discloses the information, otherwise than in the proper performance of the functions of his employment, office or profession, to another person.

(3) The circumstances referred to in subsections (1) and (2) are that the acquisition or disposal in question occurs on a recognised investment exchange.

(4) This section has effect subject to sections 405C and 405D.

[Section 405B inserted by 2004:24 s.4 effective 1 November 2004]

Defences

405C (1) An individual is not guilty of insider dealing by virtue of dealing in investments if he shows—

(a) that he did not at the time expect the dealing to result in a profit attributable to the fact that the information in question was price-sensitive information in relation to the investments;

(b) that at the time he believed on reasonable grounds that the information had been disclosed widely enough to ensure that none of those taking part in the dealing would be prejudiced by not having the information; or

(c) that he would have done what he did even if he had not had the information.

(2) An individual is not guilty of insider dealing by virtue of encouraging another person to deal in investments if he shows—

(a) that he did not at the time expect the dealing to result in a profit attributable to the fact that the information in question was price-sensitive information in relation to the investments;

(b) that at the time he believed on reasonable grounds that the information had been or would be disclosed widely enough to ensure that none of those taking part in the dealing would be prejudiced by not having the information; or

(c) that he would have done what he did even if he had not had the information.

(3) An individual is not guilty of insider dealing by virtue of a disclosure of information if he shows—

(a) that he did not at the time expect any person, because of the disclosure, to deal in investments in the circumstances mentioned in section 405B; or

(b) that, although he had such an expectation at the time, he did not expect the dealing to result in a profit attributable to the fact that the information was price-sensitive information in relation to the investments.

(4) In this section references to a profit include references to the avoidance of a loss.

[Section 405C inserted by 2004:24 s.4 effective 1 November 2004]

Special defences

405D Sections 405E and 405F provide special defences to the offence of insider dealing.

[Section 405D inserted by 2004:24 s.4 effective 1 November 2004]

Market makers

405E (1) An individual is not guilty of insider dealing by virtue of dealing in investments or encouraging another person to deal if he shows that he acted in good faith in the course of—

(a) his business as a market maker; or

(b) his employment in the business of a market maker.

(2) A market maker is a person who—

(a) holds himself out at all normal times in compliance with the rules of a recognised investment exchange as willing to acquire or dispose of investments; and

(b) is recognised as doing so under those rules.

[Section 405E inserted by 2004:24 s.4 effective 1 November 2004]

Market information

405F (1) An individual is not guilty of insider dealing by virtue of dealing in investments or encouraging another person to deal if he shows that—

(a) the information which he had as an insider was market information; and

(b) it was reasonable for an individual in his position to have acted as he did despite having that information as an insider at the time.

(2) In determining whether it is reasonable for an individual to do any act despite having market information at the time, there shall, in particular, be taken into account—

(a) the content of the information;

(b) the circumstances in which he first had the information and in what capacity; and

(c) the capacity in which he now acts.

(3) An individual is not guilty of insider dealing by virtue of dealing in investments or encouraging another person to deal if he shows—

(a) that he acted—

(i) in connection with an acquisition or disposal which was under consideration or the subject of negotiation, or in the course of a series of such acquisitions or disposals; and

(ii) with a view to facilitating the accomplishment of the acquisition or disposal or the series of acquisitions or disposals; and

(b) that the information which he had as an insider was market information arising directly out of his involvement in the acquisition or disposal or series of acquisitions or disposals.

(4) For the purposes of subsections (2) and (3) market information is information consisting of one or more of the following facts—

(a) that investments of a particular kind have been or are to be acquired or disposed of, or that their acquisition or disposal is under consideration or the subject of negotiation;

(b) that investments of a particular kind have not been or are not to be acquired or disposed of;

(c) the number of investments acquired or disposed of or to be acquired or disposed of or whose acquisition or disposal is under consideration or the subject of negotiation;

(d) the price (or range of prices) at which investments have been or are to be acquired or disposed of or the price (or range of prices) at which investments whose acquisition or disposal is under consideration or the subject of negotiation may be acquired or disposed of;

(e) the identity of the persons involved or likely to be involved in any capacity in an acquisition or disposal.

[Section 405F inserted by 2004:24 s.4 effective 1 November 2004]

Investments to which sections 405B to 405F apply

405G Sections 405B to 405F apply to any investment which—

(a) falls within paragraphs 1 to 9 of Part 1 of the First Schedule to the Investment Business Act 2003; and

(b) is listed on the Bermuda Stock Exchange or any other recognised investment exchange in Bermuda;

and in the provisions of these sections any reference to an investment is a reference to an investment to which these sections apply.

[Section 405G inserted by 2004:24 s.4 effective 1 November 2004]

"Dealing in investments"

405H (1) For the purposes of sections 405B to 405F, a person deals in investments if—

(a) he acquires or disposes of the investments (whether as principal or agent); or

(b) he procures, directly or indirectly, an acquisition or disposal of the investments by any other person.

(2) For the purposes of sections 405B to 405F and this section, "acquire", in relation to an investment, includes—

(a) agreeing to acquire the investment; and

(b) entering into a contract which creates the investment.

(3) For the purposes of sections 405B to 405F and this section, "dispose", in relation to an investment, includes—

(a) agreeing to dispose of the investment; and

(b) bringing to an end a contract which created the investment.

(4) For the purposes of subsection (1), a person procures an acquisition or disposal of an investment if the investment is acquired or disposed of by a person who is—

(a) his agent;

(b) his nominee; or

(c) a person who is acting at his direction;

in relation to the acquisition or disposal.

(5) Subsection (4) is not exhaustive as to the circumstances in which one person may be regarded as procuring an acquisition or disposal of investments by another.

[Section 405H inserted by 2004:24 s.4 effective 1 November 2004]

"Inside information", etc.

405I (1) For the purposes of this section and section 405J, "inside information" means information which—

(a) relates to particular investments or to a particular issuer of investments or to particular issuers of investments and not to investments generally or to issuers of investments generally;

(b) is specific or precise;

(c) has not been made public; and

(d) if it were made public would be likely to have a significant effect on the price of any such investments.

(2) For the purposes of sections 405B to 405F, investments are "price-affected investments" in relation to inside information, and inside information is "price-sensitive information" in relation to investments, if and only if the information would, if made public, be likely to have a significant effect on the price of the investments.

(3) For the purposes of this section "price" includes value.

[Section 405I inserted by 2004:24 s.4 effective 1 November 2004]

"Insiders"

405J (1) For the purposes of sections 405B to 405I, a person has information as an insider if and only if—

(a) it is, and he knows that it is, inside information; and

(b) he has it, and knows that he has it, from an inside source.

(2) For the purposes of subsection (1), a person has information from an inside source if and only if—

(a) he has it through—

(i) being a director, employee or shareholder of an issuer of investments; or

(ii) having access to the information by virtue of his employment, office or profession; or

(b) the direct or indirect source of his information is a person within paragraph (a).

[Section 405J inserted by 2004:24 s.4 effective 1 November 2004]

Information "made public"

405K (1) For the purposes of section 405I, "made public", in relation to information, shall be construed in accordance with the following provisions of this section; but those provisions are not exhaustive as to the meaning of that expression.

(2) Information is made public if—

(a) it is published in accordance with the rules of a recognised investment exchange for the purpose of informing investors and their professional advisers;

(b) it is contained in records which by virtue of any enactment are open to inspection by the public;

(c) it can be readily acquired by those likely to deal in any investments—

(i) to which the information relates; or

(ii) of an issuer to which the information relates; or

(d) it is derived from information which has been made public.

(3) Information may be treated as made public even though—

(a) it can be acquired only by persons exercising diligence or expertise;

(b) it is communicated to a section of the public and not to the public at large;

(c) it can be acquired only by observation;

(d) it is communicated only on payment of a fee; or

(e) it is published only outside Bermuda.

[Section 405K inserted by 2004:24 s.4 effective 1 November 2004]

Other interpretation provisions

405L (1) For the purposes of sections 405B to 405K, "recognised investment exchange" means an investment exchange in relation to which a recognition order is in force under the Investment Business Act 2003.

(2) For the purposes of sections 405B to 405K an "issuer" , in relation to any investments, means any company, public sector body or individual by which or by whom the investments have been or are to be issued.

(3) For the purposes of sections 405B to 405K, 405N and this section—

(a) "company" means any body (whether or not incorporated and wherever incorporated or constituted) which is not a public sector body; and

(b) "public sector body" means—

(i) the government of Bermuda or of any country or territory outside Bermuda;

(ii) a local or municipal authority in Bermuda or elsewhere;

(iii) any international organisation the members of which includes the United Kingdom or Bermuda;

(iv) the Bermuda Monetary Authority; or

(v) the central bank of any state or territory.

(4) For the purposes of sections 405B to 405K, information shall be treated as relating to an issuer of investments which is a company not only where it is about the company but also where it may affect the company's business prospects.

[Section 405L inserted by 2004:24 s.4 effective 1 November 2004]

Penalties and prosecution

405M (1) An individual guilty of insider dealing shall be liable—

(a) on summary conviction to a fine of $25,000 or to imprisonment for two years or both;

(b) on conviction on indictment to a fine of $175,000 or to imprisonment for 7 years or both.

(2) Proceedings for offences under section 405B shall not be instituted except by or with the consent of the Director of Public Prosecutions.

[Section 405M inserted by 2004:24 s.4 effective 1 November 2004]

Limits on section 405B

405N (1) Section 405B does not apply to anything done by an individual acting on behalf of a public sector body in pursuit of monetary policies or policies with respect to exchange rates or the management of public debt or foreign exchange reserves.

(2) No contract shall be void or unenforceable by reason only of section 405B.

[Section 405N inserted by 2004:24 s.4 effective 1 November 2004]

Part XXII

[Part XXII (sections 406 to 423) repealed by 2005:15 s.9 effective 1 April 2006]

PART XXIII

DAMAGE TO PROPERTY

Interpretation of Part XXIII

424 In this Part "damage", in relation to a document, or to a writing or inscription, includes obliterating and rendering illegible, either in whole or in part.

Criminal responsibility for acts which cause injury to property

425 (1) An act or omission which causes injury to the property of another person and which is done or made without his consent is unlawful, unless such act or omission is authorized or justified or excused by law.

(2) It is immaterial that the person who does the injury is in possession of the property injured, or has a partial interest in it.

(3) A person is not criminally responsible for an injury caused to property by the use of such force as is reasonably necessary for the purpose of defending or protecting himself, or any other person, or any property, from injury which he believes, on reasonable grounds, to be imminent.

(4) When an act or omission which causes injury to property, and which would otherwise be lawful, is done or made with intent to defraud any person, it is unlawful.

(5) When an act which causes injury to property is done with intent to defraud any person, it is immaterial that the property in question is the property of the offender himself,

Arson; attempts

426 (1) Any person who wilfully and unlawfully—

(a) sets fire to any building or structure whatsoever, whether completed or not; or

(b) sets fire to any stack of hay or grass or cultivated vegetable produce, or of mineral or vegetable fuel; or

(c) sets fire to anything which is so situated that any such thing as is mentioned in paragraph (a) or (b) is likely to catch fire from it,

is guilty of a felony which is called arson, and is liable to imprisonment for ten years.

(2) Any person who attempts unlawfully to set fire to any such thing as is mentioned in subsection (1) is guilty of a felony, and is liable to imprisonment for five years.

Arson of building etc person being therein

427 Any person who wilfully and unlawfully sets fire or attempts to set fire to any building or structure whatsoever, at any time when any person is therein, is guilty of a felony, and is liable to imprisonment for fifteen years.

Setting fire to crops and growing plants; attempts

428 Any person who wilfully and unlawfully sets fire or attempts to set fire to any of the following things—

(a) a crop of cultivated vegetable produce, whether standing or cut;

(b) a crop of hay or grass under cultivation, whether the natural or indigenous product of the soil or not, and whether standing or cut;

(c) any standing trees, saplings, or shrubs, whether indigenous or not, under cultivation,

is guilty of a misdemeanour, and is liable to imprisonment for five years.

Setting fire to vessels; attempts

429 (1) Any person who wilfully and unlawfully—

(a) sets fire to any vessel, whether completed or not; or

(b) sets fire to anything which is so situated that any vessel, whether completed or not, is likely to catch fire from it,

is guilty of a felony, and is liable to imprisonment for ten years.

(2) Any person who attempts unlawfully to set fire to a vessel, whether completed or not, is guilty of a felony, and is liable to imprisonment for five years.

Arson of vessel, with intent to cause death etc

430 Any person who wilfully and unlawfully sets fire to a vessel, with intent to cause the death of any person, or whereby the life of any person is endangered, is guilty of a felony, and is liable to imprisonment for twenty years.

Casting away etc vessel with intent to cause death etc

431 Any person who wilfully and unlawfully casts away or destroys any vessel, with intent to cause the death of any person, or whereby the life of any person is endangered, is guilty of a felony, and is liable to imprisonment for twenty years,

Casting away vessels etc

432 Any person—

(a) who wilfully and unlawfully casts away or destroys any vessel, whether complete or not; or

(b) who wilfully and unlawfully does any act which tends to the immediate loss or destruction of a vessel in distress; or

(c) who with intent to bring a vessel into danger, interferes with any light, beacon, mark, or signal, used for purposes of navigation, or exhibits any false light or signal,

is guilty of a felony, and is liable to imprisonment for fifteen years.

Damaging vessels, with intent to destroy

433 Any person who wilfully and unlawfully damages any vessel, whether complete or not, with intent to destroy the vessel, or to render it useless, is guilty of a felony, and is liable to imprisonment for five years.

Interfering with marine signals

434 Any person who wilfully and unlawfully removes, defaces, or renders invisible, any boat, beacon, buoy, mark, or signal, used for the purposes of navigation, or for the guidance of seafarers, or who unlawfully attempts to remove, deface or render invisible, any such thing, is guilty of a felony, and is liable to imprisonment for seven years.

[Section 434 amended by 2012 : 30 s. 27 effective 30 June 2014]

Damaging bridges etc

435 Any person who wilfully and unlawfully damages any bridge, viaduct, or aqueduct, with intent to render the bridge, viaduct or aqueduct, or any part thereof, dangerous, impassable, or unfit for use, and thereby does in fact render the bridge, viaduct or aqueduct, or any part thereof, dangerous, impassable or unfit for use, is guilty of a felony, and is liable to imprisonment for ten years.

Damaging etc boundary marks with intent to defraud

436 Any person who wilfully and unlawfully, and with intent to defraud, removes, destroys or defaces any object or mark which has been lawfully erected or made as an

indication of the boundary of any land, is guilty of a felony, and is liable to imprisonment for three years.

Destroying or damaging will

437 (1) Any person who wilfully and unlawfully destroys or damages any testamentary instrument, whether the testator is living or dead, is, subject to subsection (2), guilty of a felony, and is liable to imprisonment for five years.

(2) It is a defence to a charge of any of the offences constituted by subsection (1) to prove that the accused person, before being charged with the offence, and in consequence of the compulsory process of a court in an action or proceeding instituted in good faith by a party aggrieved, or in a compulsory examination or deposition before a court, disclosed on oath the act alleged to constitute the offence.

(3) A person is not entitled to refuse to answer any question or interrogatory in any civil proceeding in any court on the ground that his so doing might tend to show he had committed any such offence.

Destroying or damaging deeds

438 (1) Any person who wilfully and unlawfully destroys or damages any document which is evidence of title to any land is, subject to subsection (2), guilty of a felony, and is liable to imprisonment for five years.

(2) It is a defence to a charge of any of the offences constituted by subsection (1) to prove that the accused person, before being charged with the offence, and in consequence of the compulsory process of a court in an action or proceeding instituted in good faith by a party aggrieved, or in a compulsory examination or deposition before a court, disclosed on oath the act alleged to constitute the offence.

(3) A person is not entitled to refuse to answer any question or interrogatory in any civil proceeding in any court on the ground that his so doing might tend to show he had committed any such offence.

Destroying or damaging registers

439 (1) Any person who wilfully and unlawfully destroys or damages any register which is authorized or required by any provision of law to be kept for recording births, baptisms, marriages, deaths or burials, is guilty of a felony, and is liable to imprisonment for five years.

(2) In this section "register which is authorized or required by any provision of law to be kept" includes any register in fact kept—

(a) as respects baptisms or burials, by any Incumbent or Minister; or

(b) as respects marriages, by any Marriage Officer within the meaning of the Marriage Act 1944 [*title 27 item 1*].

Destroying or damaging public records

440 Any person who wilfully and unlawfully destroys or damages—

(a) any document which is kept or deposited in Government House or in any public office; or

(b) any document which is kept or deposited in any court of justice,

is guilty of a felony, and is liable to imprisonment for five years.

Killing and injuring etc animals

441 (1) Any person who wilfully and unlawfully kills, maims, or wounds, any animal capable of being stolen, is guilty of an offence.

(2) If the animal is a horse, mare, gelding, ass, mule, bull, cow, ox, goat, pig, ram, ewe, or wether, or the young of any such animal, the offender is guilty of a felony, and is liable to imprisonment for three years.

(3) In any other case the offender is guilty of a summary offence, and is liable to a fine of $600 or to imprisonment for three months, or in the case of a second or subsequent conviction, to imprisonment for six months.

Destroying or damaging works of art etc

442 Any person who wilfully and unlawfully destroys or damages anything kept for purposes of art, literature, science, or curiosity, in any public or private museum, library, gallery, or collection, or any statue or monument in any place, or any ornament, railing, or fence, surrounding any such statue or monument, is guilty of a misdemeanour, and is liable on conviction on indictment to imprisonment for three years or on conviction by a court of summary jurisdiction to imprisonment for twelve months or to a fine of $1,250 or to both such imprisonment and fine.

Destroying or damaging trees and shrubs

443 (1) Any person who wilfully and unlawfully destroys or damages the whole or any part of any tree, sapling, or shrub, or any underwood, which is growing—

(a) in any park, pleasure ground, garden, orchard or avenue, or in any ground adjoining or held with any dwelling-house, and the amount of the injury done exceeds the sum of $250; or

(b) elsewhere than in any of the places before mentioned, and the amount of the injury done exceeds the sum of $500,

is guilty of a felony, and is liable on conviction by a court of summary jurisdiction to imprisonment for twelve months and on conviction on indictment to imprisonment for two years.

(2) If the amount of the injury done is one dollar or more, then, wherever such tree, sapling, shrub, or underwood may be growing, the offender is guilty of a summary offence, and is liable to a fine of $250, or to imprisonment for twelve months:

Provided that a person convicted a third or subsequent time under this subsection, is guilty of a misdemeanour, and is liable on conviction by a court of

summary jurisdiction to imprisonment for twelve months and on conviction on indictment to imprisonment for two years.

Destroying or damaging plants

444 Any person who wilfully and unlawfully destroys or damages any plant, root, or vegetable production growing in any place, the injury done being to the amount of $500 or more, is guilty of a misdemeanour, and is liable on conviction by a court of summary jurisdiction to imprisonment for twelve months and on conviction on indictment to imprisonment for two years:

Provided that a person convicted a second or subsequent time under this section is guilty of a felony, and is liable to imprisonment for four years.

Destroying or damaging fruit etc, in garden etc

445 Any person who wilfully and unlawfully destroys or damages any plant, root, fruit, or vegetable production growing in any garden, orchard, nursery-ground, hot-house, green-house, or conservatory, is guilty of a summary offence, and is liable to a fine of $500 or to imprisonment for six months:

Provided that a person convicted a second or subsequent time under this section, is guilty of a felony, and is liable to imprisonment for four years.

Destroying or damaging vegetable products

446 Any person who wilfully and unlawfully destroys or damages any cultivated root or plant used for the food of man or beast, or for medicine, or for distilling, or for dyeing, or for or in the course of any manufacture, which is growing in any land, open or enclosed, not being a garden, or orchard, or nursery-ground, is guilty of a summary offence, and is liable to a fine of $250 or to imprisonment for three months, or, in the case of a second or subsequent conviction, to imprisonment for six months.

Destroying or damaging walls, fences etc

447 Any person who wilfully and unlawfully damages or destroys any live or dead fence, or any wall, stile, or gate, or any part thereof respectively, is guilty of a summary offence, and is liable to a fine of $250, or, in the case of a second or subsequent conviction, to imprisonment for six months.

Destroying or damaging property in cases not otherwise provided for

448 (1) Any person who wilfully and unlawfully destroys or does damage to any property, the injury done being to an amount exceeding $60, is, unless otherwise stated, guilty of a misdemeanour, and is, if no other punishment is provided, liable on conviction by a court of summary jurisdiction to imprisonment for twelve months and on conviction on indictment to imprisonment for two years:

Provided that if the offence is committed in the night the offender is liable on conviction by a court of summary jurisdiction to imprisonment for twelve months and on conviction on indictment to imprisonment for three years.

(2) Any person who wilfully and unlawfully destroys or damages any property, the injury being to an amount not exceeding $60 is, unless otherwise stated, guilty of a summary offence, and is liable to a fine of $250 or to imprisonment for two months.

DIVISION V

PROCEDURE IN CRIMINAL CAUSES AND MATTERS

PART XXIV

JURISDICTION; ARREST; SEIZURE OF PROPERTY; AND PRELIMINARY PROCEEDINGS

Jurisdiction

449 The jurisdiction of courts of justice with respect to the trial of offenders is set forth in the provisions of law relating to the constitution and jurisdiction of those courts respectively.

Power to require offence triable summarily or on indictment to be treated as indictable offence

450 Where a person is charged with an offence triable either way then the following provisions of this section shall have effect—

(a) where, in the opinion of the Director of Public Prosecutions, the charge is a fit subject for prosecution by indictment, the Director of Public Prosecutions may issue a certificate in writing accordingly, and upon production of such certificate to the magistrate before whom the accused person stands charged the magistrate shall not sit as a court of summary jurisdiction to deal summarily with the charge but shall treat the charge as though the offence were an indictable offence which is not triable summarily;

(b) *[Repealed]*

[Section 450 amended by 1999:8 s.2 & Sch 1 effective 1 April 1999; and by 2005:43 s.4(1) effective 30 December 2005; paragraph (b) repealed by 2015 : 38 s. 92 effective 6 November 2015]

Power of Supreme Court to make rules prescribing forms

451 *[deleted by 2015 : 37 s. 18]*

[Section 451 deleted by 2015 : 37 s. 18 effective 6 November 2015]

Limitation of time for commencing summary prosecutions

452 *[Repealed by 2015 : 38 s. 92]*

[Section 452 repealed by 2015 : 38 s. 92 effective 6 November 2015]

453 *[Repealed]*

[Section 453 repealed by 2006:1 s.102 & Sch 4 effective 8 September 2008]

454 *[Repealed]*

[Section 454 repealed by 2006:1 s.102 & Sch 4 effective 8 September 2008]

455 *[Repealed]*

[Section 455 repealed by 2006:1 s.102 & Sch 4 effective 8 September 2008]

456 *[Repealed]*

[Section 456 repealed by 2006:1 s.102 & Sch 4 effective 8 September 2008]

457 *[Repealed]*

[Section 457 repealed by 2006:1 s.102 & Sch 4 effective 8 September 2008]

458 *[Repealed]*

[Section 458 repealed by 2006:1 s.102 & Sch 4 effective 8 September 2008]

Power of police officer to stop and search persons, etc

459 It shall be lawful for a police office to stop and search—

(a) any vehicle or boat upon which there is reason to suspect that any thing stolen or unlawfully obtained may be found; or

(b) any person who is reasonably suspected of having or conveying in any manner any thing stolen or unlawfully obtained:

Provided that the onus of proving the reasonableness of the police officer's conduct shall lie on the police officer.

460 *[Repealed]*

[Section 460 repealed by 2006:1 s.102 & Sch 4 effective 8 September 2008]

Duties with respect to detention and disposal of persons arrested

461 It is the duty of a person who has arrested another person upon a charge of an offence to take him, with as little delay as possible, before a court of competent jurisdiction to be dealt with according to law, and in the meantime to keep him in safe custody at a police station, or to convey him to a prison if so directed by a Justice of the Peace or by a police officer not below the rank of Inspector.

Right of arrested person to silence and to obtain legal advice

461A A person who has been arrested by a police officer or any other person for or in connection with the commission of any offence is not obliged to say anything; and is entitled to obtain legal advice.

Rights of arrested persons held in custody

461B Where any person has been arrested and is being held in custody in a police station or other premises he shall be entitled to have notification of his arrest and of the place where he is being held sent to one person reasonably named by him without delay or, where some delay is necessary in the interest of the investigation or prevention of crime or the apprehension of offenders, with no more delay than is so necessary.

Grant of bail by police officers

462 (1) Notwithstanding any thing in section 461, on a person being taken into custody upon a charge of an offence where the person has been arrested without a warrant, a police officer not below the rank of Sergeant may in any case, and shall, if it will not in his opinion be practicable to bring such person before a court of summary jurisdiction within twenty-four hours after he was so taken into custody, inquire into the case, and unless the offence appears to such police officer to be of a serious nature, shall release the person upon his entering into a recognizance with or without sureties of a reasonable amount to appear before a court of summary jurisdiction at the time and place named in the recognizance; but where such person is detained in custody he shall be brought before a magistrate as soon as practicable.

(2) Where, on a person being taken into custody for an offence without a warrant, it appears to any such officer as aforesaid that the enquiry into the case cannot be completed forthwith, he may release the person on his entering into a recognizance with or without sureties, for a reasonable amount, conditioned for his appearance at such a police station and at such a time as is named in the recognizance unless he previously receives a notice in writing from the officer in charge of that police station that his attendance is not required; and any such recognizance may be enforced as if it were conditioned for the appearance of that person before a court of summary jurisdiction.

(3) Where, on reading the affidavit of a police officer not below the rank of Sergeant, a magistrate is satisfied that the condition of a recognizance entered into under the provisions of this section has been broken, he may order that the recognizance be estreated and that execution issue immediately, or in such time as he may direct, against the chattels, lands and persons of all persons whose recognizances have been estreated as aforesaid:

Provided that, on cause being shown, the magistrate may order the execution of such process to be stayed on such terms as he may prescribe.

463 *[Repealed]*

[Section 463 subsection (2) amended by 2001:29 s.7 effective 29 October 2001; section 463 repealed by 2006:1 s.102 & Sch 4 effective 8 September 2008]

Issue and execution of search warrant

464 *[Repealed]*

[Section 464(1) amended, and (1A), (6) to (8) inserted, by 1999:26 s.25 effective 4 October 1999; section 464 repealed by 2006:1 Sch. 4 & s.102 effective 4 January 2010]

Search and seizure of child abusive material etc

464A (1) Any police officer or customs officer may seize, remove and detain any thing which he has reason to suspect to be child abusive material or child pornography, within the meaning of Part X.

(2) If a magistrate or justice of the peace is satisfied by information on oath that there are reasonable grounds for suspecting that in or on any premises or place specified in the information any person has child abusive material or child pornography, in respect of which an offence under this Act is being or has been committed, he may issue a warrant under his hand empowering any police officer named in the warrant to search the premises or place within fourteen days of the date of the warrant.

(3) Nothing in this section shall derogate from any powers of search and seizure under any provision of law apart from this section.

[Section 464A inserted by 2007:8 s.5 effective 7 May 2008]

Forfeiture of things used for child pornography etc.

464B (1) On application of the Director of Public Prosecutions a court that convicts a person of an offence under section 182C to 182H, in addition to any other punishment that it may impose, may order that any material be forfeited to the Crown and disposed of as the Court directs if the Court is satisfied, on a balance of probabilities, that the material—

(a) was used in the commission of the offence; and

(b) is the property of—

(i) the convicted person or another person who was a party to the offence, or

(ii) a person who acquired the material from a person referred to in subparagraph (i) under circumstances that give rise to a reasonable inference that it was transferred for the purpose of avoiding forfeiture.

(2) Before making an order under subsection (1), the court shall cause notice to be given to, and shall hear, any person whom it considers to have an interest in the material, and may make an order declaring the nature and extent of the person's interest in it.

(3) There shall be paid into the Confiscated Assets Fund established under section 55A of the Proceeds of Crime Act 1997, money forfeited to the Crown under this section.

[Section 464B inserted by 2007:8 s.5 effective 7 May 2008; Section 464B subsection (3) inserted by 2019 : 36 s. 28 effective 1 November 2019]

Relief from forfeiture

464C (1) Within thirty days after an order under section 464B (1) is made, a person who claims an interest in the material forfeited may apply in writing to the court that made the order of forfeiture for an order that the forfeiture order be varied or set aside.

(2) The court that made the order of forfeiture shall fix a date on which the application is to be heard.

(3) At least fifteen days before the hearing, the applicant shall serve notice on the Director of Public Prosecutions.

(4) The court may make an order declaring that the applicant's interest in the material is not affected by the forfeiture and declaring the nature and extent of the interest if the court is satisfied that the applicant was not a person referred to in section 464B (1)(b)(i) or (ii).

[Section 464C inserted by 2007:8 s.5 effective 7 May 2008]

Forfeiture Appeals

464D (1) Any person who received a notice given under section 464B (2) and was heard by the court may appeal against the order of forfeiture-

(a) to the Supreme Court if the court that made the order is one of summary jurisdiction; or

(b) to the Court of Appeal if the court that made the order is the Supreme Court.

(2) The Director of Public Prosecutions may appeal to the Supreme Court on the refusal of a court of summary jurisdiction to grant an order of forfeiture.

(3) The Director of Public Prosecutions may appeal to the Court of Appeal on the refusal of the Supreme Court to grant an order of forfeiture.

[Section 464D inserted by 2007:8 s.5 effective 7 May 2008]

465 *[Repealed]*

[Section 465 repealed by 2006:1 s.102 & Sch 4 effective 7 September 2009]

466 *[Repealed]*

[Section 466 repealed by 2006:1 s.102 & Sch 4 effective 7 September 2009]

467 *[Repealed]*

[Section 467 repealed by 2006:1 s.102 & Sch 4 effective 7 September 2009]

468 *[Repealed]*

[Section 468 repealed by 2006:1 s.102 & Sch 4 effective 7 September 2009]

Limitation of civil and criminal proceedings arising out of arrest or seizure of goods

469 (1) An action or prosecution against any person for anything done in pursuance of any of the provisions of this Act with respect to the arrest of offenders, or the seizure of goods, may be commenced within six months after the act committed, and not otherwise.

(2) Notice in writing of the action, and of the cause of action, must be given to the defendant one month at least before the commencement of the action.

(3) The plaintiff is not entitled to recover in any such action, if tender of sufficient amends is made before action brought or if a sufficient sum of money is paid into court by the defendant after action brought.

(4) If a verdict is given for the defendant, or if the plaintiff discontinues the action, or judgment is otherwise given against the plaintiff, the defendant is entitled to full costs of action as between counsel and client.

(5) If a verdict is given for the plaintiff, he shall not recover costs against the defendant, unless the Supreme Court certified its approbation of the action and of the verdict obtained thereupon.

Preliminary proceedings on charges of indictable offences

470 The practice and procedure relating to the sending for trial of persons charged with indictable offences are set forth in the Acts relating to magistrates, their powers and authorities.

[Section 470 amended by 2015 : 38 s. 89 effective 6 November 2015]

471 *[Section 471 repealed by 2005:24 s.15(1) & Sch 3 effective 15 January 2006]*

472 *[Section 472 repealed by 2005:24 s.15(1) & Sch 3 effective 15 January 2006]*

473 *[Section 473 repealed by 2005:24 s.15(1) & Sch 3 effective 15 January 2006]*

474 *[Section 474 repealed by 2005:24 s.15(1) & Sch 3 effective 15 January 2006]*

Copies of depositions

475 *[Repealed by 2015 : 38 s. 92]*

[Section 475 repealed by 2015 : 38 s. 92 effective 6 November 2015]

Disclosure of names of jurors to persons charged with treason etc

476 When a person is to be tried—

(a) for the offence of treason contrary to section 82; or

(b) for the offence of becoming an accessory after the fact to treason, contrary to section 83; or

(c) for the offence of failing, when he knows that any person intends to commit treason, to give information thereof with all reasonable despatch to a Justice of the Peace or to use other reasonable endeavours to prevent the commission of the offence, contrary to section 84,

a list of the jurors returned to serve at the Session of the Supreme Court at which such person is to be tried, with their Christian names and surnames written at full length, and with the true place of abode and description of every juror, shall be given to him, in the

presence of two credible witnesses, ten days before he is called upon to plead to the indictment.

PART XXIVA

CASE MANAGEMENT

Purpose of a case management hearing

476A (1) The purpose of a case management hearing is to assist the court to actively manage criminal cases in accordance with its overriding objective to do justice.

(1A) Without prejudice to the generality of subsection (1), any criminal proceedings or other similar matters for proceedings for sexual offences relating to a child shall be treated as a priority for case management purposes.

(2) Subject to this Part, a case management hearing will—

(a) consider those matters that would be better decided before the start of criminal proceedings and other similar matters;

(b) make arrangements for decisions on those matters; and

(c) deal with any other matters which may be conveniently or appropriately dealt with at the case management hearing.

[Section 476A inserted by BR 89 / 2015 reg. 6 effective 6 November 2015; Section 476A subsection (1A) inserted by 2019 : 36 s. 29 effective 1 November 2019]

Timing of case management hearing

476B (1) In this Part, a hearing is a case management hearing where it is held in any of the scenarios contained in subsections (2), (3) and (4).

(2) The first scenario is that—

(a) it relates to a trial—

(i) which is to be tried summarily; and

(ii) at which the accused person has pleaded not guilty; and

(b) it takes place before the start of the trial.

(3) The second scenario is that it relates to a trial on indictment and it takes place—

(a) after the accused person has been sent for trial for the offence; and

(b) before the start of the trial.

(4) The third scenario is that it—

(a) relates to a trial on indictment to be held in pursuance of a bill of indictment preferred under the authority of section 485(2)(c) (bill preferred by direction or with consent of a judge); and

(b) takes place after the bill of indictment has been preferred and before the start of the trial.

(5) In this Part, "start of the trial" means—

(a) in a summary trial, when the court begins—

(i) to hear evidence from the prosecution at the trial; or

(ii) to consider whether to exercise its power under section 33(2) of the Mental Health Act 1968 (power to make hospital order without convicting the accused person); and

(b) in a trial on indictment, when a jury is sworn to consider the issue of guilt or fitness to plead or, if the court accepts a plea of guilty before the time when a jury is sworn, when that plea is accepted.

[Section 476B inserted by BR 89 / 2015 reg. 6 effective 6 November 2015]

Holding a case management hearing

476C (1) In any trial on indictment, the Supreme Court shall hold a case management hearing with the prosecutor and the accused person or barrister and attorney for the accused person, which is to be presided over by a judge of that court.

(2) In any summary trial, a case management hearing may be held—

(a) on an application by a party to the case; or

(b) of the magistrate's own motion.

(3) This section does not preclude multiple case management hearings in respect of any trial.

[Section 476C inserted by BR 89 / 2015 reg. 6 effective 6 November 2015]

Powers exercisable at a case management hearing

476D (1) A judge has the following powers at a case management hearing—

(a) assisting the parties to identify the witnesses to be heard, taking into account the witnesses' needs and circumstances;

(b) encouraging the parties to make admissions and reach agreements;

(c) encouraging the parties to consider any other matters that would promote a fair and efficient trial;

(d) establishing schedules and imposing deadlines on the parties;

(e) hearing guilty pleas and imposing sentences; and

(f) assisting the parties to identify the issues that are to be dealt with before the start of the trial.

(2) A judge may also adjudicate any issues that can be decided at a case management hearing, including those related to—

(a) the disclosure of evidence;

(b) the admissibility of evidence;

(c) expert witnesses;

(d) the severance of counts;

(e) the separation of trials on one or more counts when there is more than one accused person; and

(f) any other question of evidence or law relating to the case concerned.

(3) A ruling may be made under this section—

(a) on an application by a party to the case; or

(b) of the judge's own motion.

(4) Subject to subsection (5), a ruling made under this section has binding effect from the time it is made until the case against the accused person or, if there is more than one, against each of them is disposed of; and the case against an accused person is disposed of if—

(a) he is acquitted or convicted;

(b) the jury is discharged for failing to reach a verdict; or

(c) the prosecutor decides not to proceed with the case against him.

(5) A judge may discharge or vary (or further vary) a ruling made under this section only if it appears to him that it is in the interests of justice to do so; and a judge may act under this subsection—

(a) on an application by a party to the case; or

(b) of the judge's own motion.

(6) No application may be made under subsection (5)(a) unless there has been a material change of circumstances since the ruling was made or, if a previous application has been made, since the application (or last application) was made.

(7) The judge referred to in subsection (5) need not be the judge who made the ruling or, if it has been varied, the judge (or any of the judges) who varied it.

(8) This section is without prejudice to any other power exercisable by, or duty imposed on, a judge or the court contained in any other enactment.

[Section 476D inserted by BR 89 / 2015 reg. 6 effective 6 November 2015]

Appointment of a case management judge

476E (1) In respect of any trial on indictment, the Chief Justice may appoint a judge of the Supreme Court to serve as the trial's case management judge if he is of the opinion that such appointment would be necessary for the proper administration of justice.

(2) The power in subsection (1) may be exercised—

(a) on an application by a party to the case; or

(b) of the Chief Justice's own motion.

(3) An application under subsection (2)(a) may be made at any time after the indictment is preferred.

(4) The appointment of a judge as case management judge does not preclude him from serving as the judge who hears the evidence at trial.

[Section 476E inserted by BR 89 / 2015 reg. 6 effective 6 November 2015]

Role of case management judge

476F The case management judge shall assist in promoting a fair and efficient trial, including by ensuring that the evidence is presented at trial, to the extent possible, without interruption.

[Section 476F inserted by BR 89 / 2015 reg. 6 effective 6 November 2015]

Powers of case management judge

476G (1) In performing his duties before the start of the trial, the case management judge shall—

(a) preside over any case management hearings held under section 476C;

(b) exercise powers to make rulings under section 476D; and

(c) decide any issues on their merits under section 476J.

(2) In a trial on indictment, the case management judge shall also have power to hear and decide any application pursuant to section 15(1) of the Second Schedule to the Bermuda Constitution Order 1968 which directly relates to the trial.

[Section 476G inserted by BR 89 / 2015 reg. 6 effective 6 November 2015]

Information relevant to be part of the court record

476H (1) When the case management judge is of the opinion that the measures to promote a fair and efficient trial can be taken before the start of the trial (including adjudicating the issues that can be decided), he shall ensure that the court record includes information that, in his opinion, may be relevant at the stage of the presentation of the evidence at trial, including—

(a) the names of the witnesses to be heard that have been identified by the parties;

(b) any admissions made and agreements reached by the parties;

(c) the estimated time required to conclude the trial;

(d) any orders and decisions; and

(e) any issues identified by the parties that are to be dealt with at the stage of the presentation of the evidence on the merits.

(2) This section does not apply to a case management judge who also hears the evidence at trial.

[Section 476H inserted by BR 89 / 2015 reg. 6 effective 6 November 2015]

Trial continuous

476I Even if the judge who hears the evidence at trial is not the same as the case management judge, the trial of an accused person shall proceed continuously, subject to adjournment or postponement by the court.

[Section 476I inserted by BR 89 / 2015 reg. 6 effective 6 November 2015]

Issues referred to the case management judge

476J (1) During the presentation of the evidence at trial, the case management judge shall adjudicate any issue referred to him by the judge hearing the evidence.

(2) For the purposes of adjudicating an issue, the case management judge may exercise the powers of a trial judge.

[Section 476J inserted by BR 89 / 2015 reg. 6 effective 6 November 2015]

Restrictions on reporting

476K (1) Except as provided by this section, no report of matters falling within subsection (2) may be published in Bermuda.

(2) The following matters fall within this subsection—

(a) a ruling under section 476D;

(b) proceedings on an application for a ruling under section 476D;

(c) an order under section 476D that a ruling be discharged, varied or further varied; and

(d) proceedings on an application under section 476D for a ruling to be discharged, varied or further varied.

(3) The judge dealing with any matter falling within subsection (2) may order that subsection (1) does not apply, or does not apply to a specified extent, to a report of the matter.

(4) Where there is only one accused person and he objects to the making of an order under subsection (3)—

(a) the court may make the order if (and only if) it is satisfied after hearing the representations of the accused person that it is in the interests of justice to do so; and

(b) if the order is made, it shall not apply to the extent that a report deals with any such objection or representations.

(5) Where there are two or more accused persons and one or more of them objects to the making of an order under subsection (3)—

(a) the court may make the order if (and only if) it is satisfied after hearing the representations of each of the accused persons that it is in the interests of justice to do so; and

(b) if the order is made, it shall not apply to the extent that a report deals with any such objection or representations.

(6) Subsection (1) does not apply to the publication of a report of matters made at the conclusion of the trial of the accused person or of the last of the accused persons to be tried.

(7) Nothing in this section affects any prohibition or restriction imposed by virtue of any other enactment on the publication of a report of any matter.

[Section 476K inserted by BR 89 / 2015 reg. 6 effective 6 November 2015]

Offences in connection with reporting

476L (1) If a report is published in contravention of section 476K, each of the following persons is guilty of an offence—

(a) in the case of a publication of a written report as part of a newspaper or periodical, any proprietor, editor or publisher of the newspaper or periodical;

(b) in the case of a publication of a written report otherwise than as part of a newspaper or periodical, the person who publishes it;

(c) in the case of the inclusion of a report in a broadcasting programme—

(i) any body corporate which is engaged in providing the service in which the programme is included; and

(ii) any person having functions in relation to the programme corresponding to those of an editor of a newspaper.

(2) A person guilty of an offence under this section is liable on summary conviction to a fine of an amount not exceeding $5,000.

(3) Proceedings for an offence under this section shall not be instituted in Bermuda otherwise than by or with the consent of the Director of Public Prosecutions.

[Section 476L inserted by BR 89 / 2015 reg. 6 effective 6 November 2015]

PART XXV

INDICTMENTS

Form of indictment

477 (1) An indictment shall be intituled with the name of the Supreme Court, and must, subject to the provisions hereinafter contained, set forth the offence with which the accused person is charged in such manner, and with such particulars as to the alleged time and place of committing the offence, and as to the person, if any, alleged to be

aggrieved, and as to the property, if any, in question, as may be necessary to inform the accused person of the nature of the charge.

(2) If any circumstance of aggravation is intended to be relied upon, it must be charged in the indictment.

(3) It is sufficient to describe an offence in the words of this Act or of the Act or Act of the Parliament of the United Kingdom declaring the offence.

(4) The place of trial shall be described as "Bermuda Islands" in the margin of the indictment.

General rules applying to contents of indictment

478 The following rules shall apply with respect to all indictments—

(a) any document or thing may be described by any name or designation by which it is usually known, and any document may be described by its purport without setting out a copy or facsimile of the whole or any part of it;

(b) a trade mark may be described by that name, and any other mark may be described in any way which will indicate its nature, without setting out a copy or facsimile of it;

(c) it is not necessary to set forth the value of any thing mentioned in an indictment unless the value is an essential element of the offence;

(d) it is not necessary to set forth the means or instrument by which any act is done, unless the means or instrument are or is an essential element of the offence;

(e) it is not necessary to set forth particulars as to any person or thing which need not be proved, nor any other matter which need not be proved.

Rules relating to contents of particular indictments

479 (1) An indictment for treason must state the overt acts of the treason alleged.

(2) In an indictment for an offence which relates to giving false testimony, or to making a false statement on solemn declaration or otherwise, or to procuring the giving of false testimony or the making of a false statement, it is not necessary to set forth the words of the oath, or engagement, or testimony, or statement, but it is sufficient to set forth the purport thereof, or so much of the purport as is material,

(3) In an indictment for an offence which relates to giving false testimony, or procuring or attempting to procure the giving of false testimony, it is not necessary to allege the jurisdiction of the court or tribunal before which the false testimony was given, or intended or proposed to be given.

(4) In an indictment for an offence committed with respect to the Post Office or to the revenue of that department, or to anything under the control of the Postmaster General, any property of which the ownership must be alleged may be alleged to be the

property of the Postmaster General; and in any such case the Postmaster General may be described by that term alone, without mentioning his name or using any other addition or description.

(5) In an indictment in which it is necessary to mention money, such money may be described simply as money, without specifying any particular form of money; and such an averment, so far as regards the description of the property, will be sustained by proof that the offender obtained or dealt with any coin or anything which is included in "money" or any portion of the value of either, in such a manner as to constitute the offence, although such coin or thing was delivered to him in order that some part of the value thereof should be returned to the person who delivered the same or to some other person, and has been returned accordingly.

(6) In an indictment in which it is necessary to mention any co-owners of property it is sufficient to name one of such persons, adding the words "and another" or "and others", as the case may be, and to state that the property belonged to the person so named and another or others, as the case may be.

(7) In an indictment against a man for an offence committed by him with respect to his wife's separate property, the property may be alleged to be the property of the wife.

(8) In an indictment for an offence relating to any property of a company which is authorized to sue and be sued in the name of a public officer, the property may be alleged to be the property of the public officer.

(9) In an indictment for an offence relating to any property which by any Act is to be deemed to be the property of any officer of any society or institution, the property in question may be alleged to be the property of the officer of the society or institution for the time being by his name of office.

(10) In an indictment for an offence relating to a testamentary instrument or any public record or any document deposited in any court of justice it is not necessary to allege that the instrument is the property of any person.

(11) In an indictment for an offence relating to anything fixed in a public square or street, or in a place dedicated to public use or ornament, or to anything in or taken from a public office, it is not necessary to allege that the thing in respect of which the offence is committed is the property of any person.

(12) In an indictment for an offence relating to a document which is evidence of title to land, the document may be described as being evidence of the title of the person, or some one of the persons, having an estate in the land to which the document relates, the land or some part thereof being described in some manner sufficient to identify it.

(13) In an indictment for stealing a chattel or fixture let to the offender, the chattel or fixture may be described as the property of the person who actually let it to hire.

(14) In an indictment for an offence with respect to anything belonging to or in the possession or power of the Government of the United Kingdom or of the Government of Bermuda or of any branch or department of either of such Governments, or against a person employed in the public service for an offence committed with respect to anything

which came into his possession by virtue of his employment the thing in question may be described as the property of Her Majesty.

(15) In an indictment for an offence respecting any property, if it is uncertain to which of two or more persons the property belonged at the time when the offence was committed, the property may be described as being the property of one or other of such persons, naming each of them, but without specifying which of them, and the indictment will be sustained, so far as regards the allegation of ownership, upon proof that at the time when the offence was committed the property belonged to one or other of such persons without ascertaining which of them.

(16) In any indictment for the offence of obtaining or procuring the delivery of anything capable of being stolen by a false pretence, and with intent to defraud, or of obtaining any property by means of a fraudulent trick or device, or of inducing by means of any such trick or device the payment or delivery of any money or goods, or of attempting to commit, or to procure the commission of any such offence, it is not necessary to mention the owner of the property in question,

(17) In an indictment for an offence which involves any fraud or fraudulent pretence or trick or device, it is not necessary to set forth the details of the fraud or pretence or trick or device.

(18) In an indictment for any of the offences constituted by those provisions of Part XXI which relate to offences connected with bankruptcy, it is not necessary to set forth any debt, act of bankruptcy, adjudication or other proceeding in the Supreme Court, or any order, warrant or document, made or issued by or out of, or by the authority of the Supreme Court.

Joinder of charges in indictment

480 (1) A charge or charges for any indictable offence may be joined in the same indictment with any other such charge or charges or with a charge or charges for any summary offence which may lawfully be included in that indictment by virtue of section 13 and of the proviso to section 485(2)—

(a) if those charges are founded on the same act or omission; or

(b) if those charges are founded on separate acts or omissions which together constitute a series of acts done or omitted to be done in the prosecution of a single purpose; or

(c) if those charges are founded on separate acts or omissions which together constitute a series of offences of the same or of a similar character,

but shall not otherwise be so joined:

Provided that no one count of an indictment shall charge an accused person with having committed two or more separate offences.

(2) Notwithstanding anything in subsection (1), where it appears to the Court that an accused person is likely to be prejudiced by any joinder of charges against him, the Court—

(a) may require the prosecutor to elect upon which one of the several charges he will proceed; or

(b) may direct that the trial of the accused person be had separately upon each or any of the charges.

Joinder of charges against accessories

481 A person who counsels or procures another person to commit an offence, or who aids another person in committing an offence, or who becomes an accessory after the fact to an offence, may be charged in the same indictment with the principal offender, and may be tried with him or separately, or may be indicted and tried separately, whether the principal offender has or has not been convicted, or is not amenable to justice.

Joinder of charges connected with commission of one offence

482 Any number of persons charged with committing or with procuring the commission of the same offence, although at different times, or with being accessories after the fact to the same offence, although at different times, may be charged with substantive offences in the same indictment, and may be tried together notwithstanding that the principal offender is not included in the same indictment, or is not amenable to justice.

Joinder of charges with respect to stealing and receiving

483 (1) In an indictment against a person for stealing money, the accused person may be charged and proceeded against for the amount of a general deficiency notwithstanding that such general deficiency is made up of any number of specific sums of money the taking of which extended over any space of time.

(2) Charges of stealing any property and of receiving the same property, or any part thereof, knowing it to have been stolen, may be joined in the same indictment.

(3) Any number of persons charged with receiving, although at different times, any property which has been obtained by means of an indictable offence or by means of an act which, if it had been done in Bermuda, would be an indictable offence and which is an offence under the laws in force in the place where it was done, or any part of any property so obtained, may be charged with substantive offences in the same indictment and may be tried together notwithstanding that the person who so obtained the property is not included in the same indictment or is not amenable to justice.

Statement of previous conviction in indictment

484 In an indictment for an offence charged to have been committed after a conviction for any offence, it is sufficient, after the subsequent offence, to state the substance and effect of the indictment or information, and the conviction, for the previous offence, and the time and place of such conviction.

Preferment of indictment

485 (1) Subject to this section, a bill of indictment charging any person with an indictable offence may be preferred by any person before the Supreme Court, and where a bill of indictment has been so preferred the Registrar shall, if he is satisfied that the requirements of subsection (2) have been complied with, sign the bill, and it shall thereupon become an indictment and be proceeded with accordingly:

Provided that if a judge is satisfied that such requirements have been complied with, he may, on the application of the prosecutor or of his own motion, direct the Registrar to sign the bill and the bill shall be signed accordingly.

(2) Subject as hereinafter provided, no bill of indictment charging any person with an indictable offence shall be preferred unless—

(a) the person charged has been sent for trial for the offence in pursuance of the Criminal Jurisdiction and Procedure Act 2015; or

(b) in the case of a bill charging any person with perjury, the person charged has been committed for trial by the Supreme Court; or

(c) the bill is preferred by the direction or with the consent of a judge:

Provided that—

(i) where the person charged has been sent for trial, the bill of indictment against him may include, either in substitution for or in addition to any count charging an offence for which the person is sent pursuant to Part IV of the Criminal Jurisdiction and Procedure Act 2015, any counts founded on material which, in pursuance of section 29 or 33 of that Act, was served on the person charged, being counts which may lawfully be joined in the same indictment; and

(ii) a charge of a previous conviction of an offence may, notwithstanding that it was not included in the notice of any sending or in any such direction or consent as aforesaid, be included in any bill or indictment.

(3) If a bill of indictment preferred otherwise than in accordance with the provisions of subsection (2) has been signed by the Registrar, the indictment shall be liable to be quashed:

Provided that if the bill contains several counts, and the said provisions have been complied with as respects one or more of them, those counts only that were wrongly included shall be quashed under this subsection.

(4) The Supreme Court may make rules for carrying the provisions of this section into effect, and in particular for making provisions as to the manner in which and the time at which bills of indictment are to be preferred before the Supreme Court and the manner in which application is to be made for the consent of a judge for the preferment of a bill of indictment.

(5) Nothing in this section shall affect any provision of this Act or any other Act restricting the right to prosecute in particular classes of case.

[Section 485 subsection (2) amended by 2015 : 38 s. 89 effective 6 November 2015]

Power to issue bench warrant

486 Where it is made to appear to the Supreme Court or to a judge that it is necessary, for the furtherance of any criminal proceedings, to compel the appearance before the Supreme Court of any person—

(a) who is a person charged with an indictable offence; or

(b) who is a person convicted of an indictable offence, and in respect of whom any sentence or order imposed or made in respect of that offence has not been executed or duly carried into effect,

the Court or judge may issue a warrant to any officer of the Court or to any police officer to arrest that person and either bring him before the Court or take him before a magistrate; and if any such person is taken before a magistrate in pursuance of a warrant issued as aforesaid, the magistrate may commit him to prison until he can be brought before the Supreme Court, or may, in a proper case, admit him to bail to appear before the Supreme Court.

[Section 486 amended by 2005:24 s.15(1) & Sch 3 effective 15 January 2006]

Nolle prosequi

487 (1) The Director of Public Prosecutions may inform the Supreme Court by writing under his hand, that the Crown will not then prefer any indictment, or he may, by writing under his hand or announcement in open court, inform the Supreme Court that the Crown will not then proceed further upon an indictment then pending before the Supreme Court.

(2) When such information is given to the Supreme Court, the Supreme Court shall cause the accused person to be discharged from any further proceedings in respect of the charge or charges upon which the accused person was committed or, where an indictment is pending, which are contained in the indictment; but such discharge shall not operate as a bar to any further proceedings on the same the notice of any sending within twelve months of such sending.

[Section 487 subsection (1) amended by 1999:8 s.2 & Sch 1 effective 1 April 1999; subsection (2) amended by 2015 : 38 s. 89 effective 6 November 2015]

Formal defects in indictment

488 (1) An indictment is not open to objection by reason of the designation of any person by a name of office or other descriptive appellation instead of by his proper name, nor for omitting to state the time at which the offence was committed, unless the time is an essential element of the offence, nor for stating imperfectly the time at which the offence was committed, nor for stating the offence to have been committed on an impossible day, or on a day that never happened or has not yet happened.

(2) An objection to an indictment or to a count in an indictment, for a defect apparent on its face, shall be taken by motion to quash the indictment or count before the accused person enters a plea, and, after the accused person has entered a plea, only by leave of the court before which the proceedings take place.

(3) The court before which an objection is taken under this section may, if it considers it necessary, order the indictment or count to be amended to cure the defect.

[Section 488 subsection (2) deleted and substituted and subsection (3) inserted by 2015 : 37 s. 18 effective 6 November 2015]

Amendment of indictment

489 (1) An indictment may not be amended after it is presented, except by the prosecutor with the—

(a) leave of the court; or

(b) consent of the accused person.

(2) Nothing in this section shall affect the powers of the court under section 489A.

(3) For the purposes of this section, an amendment of an indictment includes the substitution of an indictment.

[Section 489 deleted and substituted by 2015 : 37 s. 18 effective 6 November 2015]

Orders for amendment of indictment, separate trial and postponement of trial

489A (1) Where, before trial, or at any stage of a trial, it appears to the court that the indictment is defective, the court shall make such order for the amendment of the indictment as the court thinks necessary to meet the circumstances of the case, unless, having regard to the merits of the case, the required amendments cannot be made without causing injustice.

(2) Where an indictment is so amended, a note of the order for amendment shall be endorsed on the indictment, and the indictment shall be treated for the purposes of the trial and for the purposes of all proceedings in connection therewith as being in the amended form.

(3) Where, before trial, or at any stage of a trial, the court is of the opinion that an accused person may be prejudiced or embarrassed in his defence by reason of being charged with more than one offence in the same indictment, or that for any other reason it is desirable to direct that the accused person should be tried separately for any one or more offences charged in an indictment, the court may order a separate trial of any count or counts of such indictment.

(4) Where, before trial, or at any stage of a trial, the court is of opinion that the postponement of the trial of an accused person is expedient as a consequence of the exercise of any power of the court under this Act to amend an indictment or to order a separate trial of a count, the court shall make such order as to the postponement of the trial as appears necessary.

(5) Where an order of the court is made under this section for a separate trial or for the postponement of a trial—

(a) if such an order is made during a trial the court may order that the jury are to be discharged from giving a verdict on the count or counts the trial of which is postponed or on the indictment, as the case may be; and

(b) the procedure on the separate trial of a count shall be the same in all respects as if the count had been found in a separate indictment, and the procedure on the postponed trial shall be the same in all respects (if the jury has been discharged) as if the trial had not commenced; and

(c) the court may make such order as to granting the accused person bail and as to the enlargement of recognizances and otherwise as the court thinks fit.

(6) The court may make an order under this section that takes effect either at a specified later date or on the occurrence of a specified event if, taking into account, among other considerations, the need to ensure consistent decisions, it is satisfied that it is in the interests of justice to do so.

(7) Unless the court is satisfied that it would not be in the interests of justice, any decision under section 446D (pre-trial rulings) which is made before any order issued under this section takes effect continues to bind the parties if the decisions are made or could have been made before the stage at which the evidence at trial is presented.

(8) Any power of the court under this section shall be in addition to and not in derogation of any other power of the court for the same or similar purposes.

(9) If it becomes necessary to draw up a formal record where an amendment has been made, the record shall be drawn up setting out the indictment as amended, and without taking any notice of the fact of the amendment having been made.

[Section 489A inserted by 2015 : 37 s. 18 effective 6 November 2015]

Delivery of particulars of matters alleged in indictment

490 The Supreme Court may, in any case, if it thinks fit, direct particulars to be delivered to the accused person of any matter alleged in the indictment, and may adjourn the trial for the purpose of such delivery.

Application of sections 477 to 490 and 492 to 499 to summary prosecutions

491 The provisions of sections 477 to 490 and 492 to 499 relating to indictments apply to informations preferred against offenders upon their trial before courts of summary jurisdiction.

[Section 491 section heading and section amended by 2015 : 38 s. 89 effective 6 November 2015]

Alternative conviction upon indictment charging offence involving circumstances of aggravation

492 Except as hereinafter stated, upon an indictment charging a person with an offence committed with circumstances of aggravation, he may be convicted of any offence

which is established by the evidence and which is constituted by any act or omission which is an element of the offence charged, with or without any of the circumstances of aggravation charged in the indictment.

Alternative conviction upon indictment charging offence involving specific result

493 (1) Upon an indictment charging a person with an offence of which the causing of some specific result is an element, he may be convicted of any offence which is established by the evidence, and of which an intent to cause that result, or a result of a similar but less injurious nature, is an element.

(2) Upon an indictment charging a person with an offence of which an intent to cause some specific result is an element, he may be convicted of any offence which is established by the evidence and of which the unlawful causing of that result is an element.

Alternative conviction upon indictment for procuring commission of offence

494 Upon an indictment charging a person with procuring the commission of any offence, he may be convicted of procuring the commission of any other offence of such a nature that a person may be convicted of it upon an indictment charging him with committing the offence of which the accused person is alleged to have procured the commission.

Alternative conviction for attempt to commit offence

495 (1) Upon an indictment charging a person with committing any offence, he may be convicted of attempting to commit that offence, or of attempting to commit any other offence of which he might be convicted upon the indictment.

(2) Upon an indictment charging a person with procuring the commission of any offence, he may be convicted of attempting to procure the commission of that offence, or of attempting to procure the commission of any other offence of such a nature that a person may be convicted of it upon an indictment charging him with committing the offence of which the accused person is alleged to have procured the commission.

(3) Upon an indictment charging a person with attempting to commit any offence, he may be convicted of attempting to commit any other offence of such a nature that a person may be convicted of it upon an indictment charging him with committing the offence which the accused person is alleged to have attempted to commit.

(4) Upon an indictment charging a person with attempting to procure the commission of any offence, he may be convicted of attempting to procure the commission of any other offence of such a nature that a person may be convicted of it upon an indictment charging him with committing the offence of which the accused person is alleged to have attempted to procure the commission.

Alternative conviction: general

496 (1) Where, on a person's trial on indictment for any offence except treason or murder, the jury find him not guilty of the offence specifically charged in the indictment, but the allegations in the indictment amount to or include (expressly or by implication)

an allegation of another offence falling within the jurisdiction of the court of trial, the jury may find him guilty of that other offence or of an offence of which he could be found guilty on an indictment specifically charging that other offence.

(2) For the purposes of subsection (1), any allegation of an offence shall be taken as including an allegation of attempting to commit that offence.

[Section 496 repealed and replaced by 2005:15 s.10 effective 27 July 2005]

Effect of alternative conviction

497 A person convicted under any of sections 492 to 496 (which relate to alternative convictions) is liable to the same punishment as if he had been convicted on an indictment charging him with the offence of which he is actually convicted.

Indictments for stealing and receiving stolen property

498 (1) Upon an indictment in which charges of stealing any property and of receiving the same property, or any part thereof, knowing it to have been stolen, are joined in the same indictment, then the accused person may, according to the evidence, be convicted either of stealing the property or of receiving it, or any part of it, knowing it to have been stolen.

(2) When such an indictment is preferred against two or more persons, all or any of the accused persons may, according to the evidence, be convicted either of stealing the property or of receiving it, or any part of it, knowing it to have been stolen; or, according to the evidence, one or more of them may be convicted of stealing the property and the other or others of them of receiving it, or any part of it, knowing it to have been stolen.

Indictments for joint receiving

499 Upon an indictment charging two or more persons jointly with an offence of which the receiving of any property is an element, if the evidence establishes that one or more of them separately received any part or parts of the property under such circumstances as to constitute an offence, then such one or more of the accused persons may be convicted of the offence or offences so established by the evidence.

PART XXVI

TRIAL OF OFFENDERS

Persons committed for trial to be tried within a reasonable time

500 Subject to this Part, a person committed for trial before the Supreme Court for any indictable offence shall (if indicted for that or for some other indictable offence) be brought to trial within a reasonable time.

Continuation of trial and adjournment of trial

501 (1) The trial of an accused person shall proceed continuously, subject to adjournment or postponement by the court.

(2) A judge may adjourn or postpone a trial from time to time in the same sitting.

(3) For the purpose of subsection (2), no formal adjournment of trial or entry thereof is required.

(4) A judge, in any case tried without a jury, may reserve final decision on any question raised at the trial, or any matter raised further to a case management hearing, and the decision, when given, shall be deemed to have been given at the trial.

(5) In any case to be tried with a jury, the judge before whom an accused is or is to be tried has jurisdiction, before any juror on a panel of jurors is called and in the absence of any such juror, to deal with any matter that would ordinarily or necessarily be dealt with in the absence of the jury after it has been sworn.

(6) On any such adjournment or postponement the Court may direct the trial to be held upon such day as the Court may determine, and may remand the accused person accordingly.

(7) In any such case, the accused person is bound to attend to be tried, and the witnesses are bound to attend to give evidence, at the time and place to which the trial is adjourned or postponed without entering into any fresh recognizances for that purpose, in the same manner as if they had respectively been originally bound by their recognizances to attend to be tried and to attend to give evidence at the time and place to which the trial is adjourned or postponed.

[Section 501 subsection (3) amended by 2005:24 s.15(1) & Sch 3 effective 15 January 2006; deleted and substituted by 2015 : 37 s. 18 effective 6 November 2015]

Delivery of copy of indictment

502 When an indictment is preferred against any person, a copy thereof shall be delivered to him without fee not less than twenty-four hours before he is called upon to plead to such indictment.

Commencement of trial; arraignment

503 (1) At the time appointed for the trial of an accused person, he shall be informed in open court of the offence with which he is charged, as set forth in the indictment, and shall be called upon to plead to the indictment, and to say whether he is guilty or not guilty of the charge.

(2) The trial is deemed to begin when he is so called upon.

Procedure on charge of offence against a company

503A (1) On arraignment of a company, the company may enter in writing by its representative a plea of guilty or not guilty, and if either the company does not appear by a representative or, though it does so appear, fails to enter as aforesaid any plea, the court shall order a plea of not guilty to be entered and the trial shall proceed as though the company had duly entered a plea of not guilty.

(2) Provision may be made by rules with respect to the service on any company charged with an offence of any documents required to be served in connection with the proceedings.

(3) In this section the expression "representative" in relation to a company means a person duly appointed by the company to represent it for the purpose of doing any act or thing which the representative of a company is by this section authorized to do, but a person so appointed shall not, by virtue only of being so appointed, be qualified to act on behalf of the company before any court for any other purpose.

(4) A representative for the purposes of this section need not be appointed under the seal of the company, and a statement in writing purporting to be signed by a managing director of the company, or by any person (by whatever name called) having, or being one of the persons having, the management of the affairs of the company, to the effect that the person named in the statement has been appointed as the representative of the company for the purposes of this section shall be admissible without further proof as prima facie evidence that that person has been so appointed.

[Section 503A inserted by 2015 : 38 s. 89 effective 6 November 2015]

Motion to quash indictment

504 (1) The accused person may before pleading apply to the Supreme Court to quash the indictment on the ground that it is calculated to prejudice or embarrass him in his defence to the charge, or that it is formally defective.

(2) Upon such motion the Supreme Court may quash the indictment, or may order it to be amended in such manner as the Court thinks just, or may refuse the motion.

Misnomer

505 If the accused person says that he is wrongly named in the indictment, the Supreme Court may, on being satisfied by affidavit or otherwise of the error, order the indictment to be amended.

Pleas

506 (1) If the accused person does not apply to quash the indictment, he must either plead to it, or demur to it on the ground that it does not disclose any offence cognizable by the Supreme Court.

(2) If the accused person pleads, he may plead—

(a) that he is guilty of the offence charged in the indictment, or, with, the consent of the Crown, of any other offence of which he might be convicted upon the indictment;

(b) that he is not guilty;

(c) that he has already been convicted upon an indictment on which he might have been convicted of the offence with which he is charged, or

has already been convicted of an offence of which he might be convicted upon the indictment;

(d) that he has already been acquitted upon an indictment on which he might have been convicted of the offence with which he is charged, or has already been acquitted upon indictment of an offence of which he might be convicted upon the indictment;

(e) that he has already been tried and convicted or acquitted of an offence committed or alleged to be committed under such circumstances that he cannot under this Act be tried for the offence charged in the indictment;

(f) that he has received the Royal Pardon for the offence charged in the indictment;

(g) that the court has no jurisdiction to try him for the offence.

(3) Two or more pleas may be pleaded together, except that the plea of guilty cannot be pleaded with any other plea to the same charge.

(4) An accused person may plead and demur together.

Plea of autrefois convict or acquit

507 In a plea that the accused person has already been convicted or acquitted, it is sufficient to state that he has been lawfully convicted, or acquitted, as the case may be, of the offence charged in the indictment, or of the other offence of which he alleges that he has been convicted or acquitted, and, in the latter case, to describe the offence by any term by which it is commonly known.

Defence of truth of defamatory matter

508 A person charged with the unlawful publication of defamatory matter, who sets up as a defence that the defamatory matter is true and that it was for the public benefit that the publication should be made, must plead that matter specially, and may plead it with any other plea, except the plea of guilty.

Standing mute

509 If an accused person, on being called upon to plead to an indictment will not plead or answer directly to the indictment, the Supreme Court may, if it thinks fit, order a plea of not guilty to be entered on behalf of the accused person, and a plea so entered has the same effect as if it had been actually pleaded.

Plea to the jurisdiction of the court

510 Upon a plea to the jurisdiction of the court, the Supreme Court shall proceed to satisfy itself, in such manner and upon such evidence as it thinks fit, whether it has jurisdiction or not, and may ascertain the fact by the verdict of the jury or otherwise.

Demurrer

511 (1) When an accused person demurs only and does not plead any plea, the Supreme Court shall proceed to hear and determine the matter forthwith, and, if the demurrer is overruled, the accused person shall be called upon to plead to the indictment.

(2) When an accused person pleads and demurs together it is in the discretion of the Court whether the plea or the demurrer shall be first disposed of.

(3) No joinder in demurrer is necessary.

Trial by jury of issues raised

512 If the accused person pleads any plea or pleas other than a plea of guilty or a plea to the jurisdiction of the court, he is by such plea, without any further form, deemed to have demanded that the issues raised by such plea or pleas shall be tried by a jury, and is entitled to have them tried accordingly.

Further pleas and trial of issues

513 (1) When the issues raised by any plea or pleas, except the plea of not guilty, have been found against an accused person who has not pleaded the plea of not guilty, he is to be called upon to plead afresh, and, if those issues have been tried by a jury, the Supreme Court may direct the issues raised by any fresh plea to be tried by the same jury or by another jury.

(2) If the Court directs them to be tried by the same jury, it is not necessary that the jury should be sworn afresh, but the oath already taken by them is to be deemed to extend to the trial of such fresh issues.

Want of understanding of accused person

514 (1) If, when an accused person is called upon to plead to the indictment, it appears to be uncertain, for any reason, whether he is capable of understanding the proceedings at the trial, so as to be able to make a proper defence, the jury shall be empanelled forthwith, who shall be sworn to find whether he is capable or not.

(2) If the jury find that he is capable of understanding the proceedings, the trial shall proceed as in other cases.

(3) If the jury find that he is not so capable, the finding shall be recorded, and the Supreme Court shall order the accused person to be kept in strict custody in such place and in such manner as the Court thinks fit, until the pleasure of the Governor, acting in his discretion, is known.

(4) A person so found to be incapable of understanding the proceedings at the trial may be again called upon to plead to the indictment and to be tried for the offence.

Separate trials

515 When two or more persons are charged in the same indictment, whether with the same offence or with different offences, the Supreme Court may at any time during the trial, on the application of any of the accused persons, direct that the trial of the accused

persons or any of them shall be had separately from the trial of the other or others of them, and for that purpose may, if a jury has been sworn, discharge the jury from giving a verdict as to any of the accused persons.

Qualifications and summoning of jurors

516 The law respecting the qualifications of jurors, and the summoning of jurors to attend for the trial of persons charged with indictable offences, is set forth in the Acts relating to juries and jurors.

Duty to inform accused person of right of challenge

517 When an accused person has demanded to be tried by a jury the proper officer of the Supreme Court shall inform him in open court that the persons whose names are to be called are the jurors to be sworn for his trial, and shall further inform him that if he desires to challenge any of them he must do so before they are sworn.

Drawing of juries and selection of special juries

518 (1) This section shall have effect with respect to the composition of juries empanelled to try any issue in connection with the trial of any person charged with an indictable offence.

(2) A jury required to be empanelled shall be drawn from among those members of the whole panel of jurors who are, by virtue of the provisions of the law for the time being having effect with respect to the returning of jurors, liable to serve as jurors at the session (as defined for the purposes of the Jurors Act 1971) [*title 8 item 14*] during which the trial takes place, and who are liable and available to serve as jurors at that particular trial.

(3) Subject to subsection (4) and section 519, a jury shall consist of the twelve jurors whose names are first drawn and called in open court by the proper officer of the Supreme Court.

(4) If the judge considers it advisable in the interests of justice to have one, two or three alternate jurors, the judge shall order that one, two or three further names be drawn.

[Section 518 subsection (4) repealed by 2004:37 s.2 effective 17 December 2004; subsection (3) amended and subsection (4) inserted by 2015 : 37 s. 18 effective 6 November 2015]

Challenge of jurors

519 (1) An accused person arraigned on an indictment for any indictable offence, and the Crown in relation to each accused person, may each effectively challenge without cause—

(a) if an offence is punishable with a mandatory life sentence of imprisonment, not more than five persons; or

(b) in any other case, not more than three persons,

drawn to serve as jurors in connection with the trial.

(1A) Where both the Crown and an accused person agree that a person drawn to serve as a juror should be excused, it shall not be considered an effective challenge and the judge shall discharge such person from serving as a juror in connection with the trial.

(2) *[Repealed by 2020 : 38 s. 3]*

(3) *[Repealed by 2020 : 38 s. 3]*

(4) The Crown or the accused person may effectively challenge for cause any person drawn to serve as a juror in connection with the trial on the ground—

(a) that the person is not qualified by law to serve as a juror; or

(b) that the juror is not or may not be indifferent as between the Crown and the accused person.

(5) Any challenge to a juror for cause shall be tried by the court before whom the accused person is to be tried.

(6) In any case where an effective challenge is made as aforesaid, the person effectively challenged shall be discharged from serving as a juror in connection with the trial; and accordingly, a further name shall be drawn in the manner provided in section 518(2) and (3), and the person whose name is so drawn shall, subject to effective challenge under this section, serve as a juror in the place of the person discharged.

(7) The right of challenge without cause shall be exercised by an accused personally, whether or not he is legally represented.

[Section 519 amended by 2020 : 38 s. 3 effective 5 August 2020]

Time for challenging

520 An objection to a juror, either by way of challenge without cause or by way of challenge for cause, may be made at any time before the proper officer of the Supreme Court has begun to recite the words of the oath to the jury or to a juror, but not afterwards.

Power of court to order all male jury

521 *[Repealed by 2020 : 38 s. 4]*

[Section 521 repealed by 2020 : 38 s. 4 effective 5 August 2020]

Swearing etc of jury

522 (1) The jury (including any alternate jurors) shall be sworn to give a true verdict according to the evidence upon the issues to be tried by them.

(2) The whole or any two or more members of the jury may be sworn together:

Provided that an opportunity to challenge each of the members separately shall be furnished to the Crown and to the accused person before the oath is administered.

(3) When the jury has been sworn, the proper officer of the Supreme Court shall inform them of the charge set forth in the indictment, and of their duty as jurors upon the trial.

[Section 522 subsection (1) amended by 2015 : 37 s. 18 effective 6 November 2015]

Substitution of alternate jurors

522A (1) Alternate jurors shall attend the presentation of the evidence at trial and, if there is not a full jury present, shall replace any absent juror, in the order in which their cards were drawn under subsection 518(4).

(2) An alternate juror who is not required as a substitute shall be excused.

[Section 522A inserted by 2015 : 37 s. 18 effective 6 November 2015]

Election of foreman

523 A jury, upon being sworn, shall elect one of the members to be a foreman.

Discharge of juror for cause subsequent to oath

524 Where after a juror has been sworn, and during the trial of an accused person, it appears to the Supreme Court that the juror is not indifferent as between the Crown and the accused person, the Court, without prejudice to the power of the Court to discharge the whole jury, may discharge that juror from further service in connection with the trial.

Effect of death or discharge of juror during trial

525 Where after a jury has been sworn—

(a) a juror dies; or

(b) a juror is, by virtue of any power conferred upon the Supreme Court by any provision of law, excused and discharged from further service in connection with the trial; or

(c) a juror is discharged under section 524 from further service in connection with the trial; or

(d) a juror fails at any stage of the trial duly to appear, and is discharged from further service in connection with the trial,

then in any such case the jury shall nevertheless and so long as the number of its members is not reduced below nine, be considered as remaining for all the purposes of the trial properly constituted, and the trial shall proceed and a verdict may be given accordingly.

[Section 525 amended by 2005:15 s.11 effective 27 July 2005; amended by 2015 : 37 s. 18 effective 6 November 2015]

Presence of accused person at trial

526 (1) The trial must take place in the presence of the accused person, unless he so conducts himself as to render the continuance of the proceedings in his presence

impracticable, in which case the Supreme Court may order him to be removed, and may direct the trial to proceed in his absence:

Provided that the Court may, with the consent of any person charged with a misdemeanour, if it thinks fit, permit that person to be absent during the whole or any part of the trial on such conditions as the Court thinks fit.

(2) If the accused person absents himself during the trial without leave, the Court may direct a warrant to be issued to arrest him and bring him before the Court forthwith.

Right of accused person to be represented by counsel

527 Every person charged with an offence is entitled to make his defence at his trial and to have the witnesses examined and cross-examined by his counsel.

Evidence in defence

528 At the close of the evidence for the prosecution the Supreme Court shall ask the accused person whether he intends to adduce evidence in his defence.

[Section 528 amended by 2009:5 s.3(1) effective 25 March 2009]

Cross-examination by co-accused

529 Where during a joint trial one of the accused persons gives evidence, and by such evidence incriminates one of the co-accused persons, then that co-accused person shall be entitled to cross-examine him, and such cross-examination shall take place before cross-examination by the counsel for the prosecution.

Order of speeches

530 (1) Before any evidence is given at the trial of an accused person, counsel for the prosecution is entitled to address the jury for the purpose of opening the evidence intended to be adduced for the prosecution.

(2) After the close of the evidence for the prosecution, the accused person or, if there is more than one accused person, each accused person may by himself or his counsel address the jury for the purpose of opening the evidence, if any, intended to be adduced for the defence.

(3) After the defence has adduced all the evidence, if any, it intends to adduce, and before any closing speech is made by or on behalf of an accused person under subsection (4), counsel for the prosecution may—

(a) in respect of an accused person who is represented by counsel, make a closing speech to the jury on the case against that accused person; and

(b) in respect of an accused person who is not represented by counsel, with the leave of the Court make a closing speech to the jury on the case against that accused person.

(4) After the prosecution has made its closing speech, if any, and regardless of whether or not any evidence is adduced for the defence, the accused person or, if there is

more than one accused person, each accused person may by himself or his counsel make a closing speech to the jury.

[Section 530 repealed and replaced by 2009:5 s.2 effective 25 March 2009]

View by jury

531 (1) The Supreme Court may in any case, if it thinks fit, direct that the jury shall view any place or thing which the Court thinks it desirable that they should see, and may give any necessary directions for that purpose.

(2) The validity of the proceedings is not affected by disobedience to any such directions, but if the fact is discovered before the verdict is given, the Court, if it is of opinion that such disobedience is likely to prejudice the fair trial of the charge, may discharge the jury, and may direct that a fresh jury be sworn, or may adjourn the trial.

Separation of jury

532 The Supreme Court may, if it thinks fit, at any time before the jury consider their verdict, permit them to separate.

Incapacity of judge

533 (1) If in the course of a trial any member of the Court, whether the Chief Justice, Puisne Judge or an Assistant Justice, becomes incapable of proceeding with the trial, the remaining member or members may, in his or their absolute discretion, either proceed with the trial, or may in the manner hereinbefore provided adjourn the trial.

(2) If the trial is proceeded with, the member of the Court so becoming incapable shall take no further part in the trial.

Summing up by judge

534 (1) After the evidence is concluded and counsel, or the accused person or persons, as the case may be, have addressed the jury, it is the duty of the Supreme Court to instruct the jury as to the law applicable to the case, with such observations upon the evidence as the Court thinks fit to make.

(2) After the Court has instructed the jury, they are to consider their verdict.

Power of Supreme Court to discharge jury

535 The Supreme Court may, it if thinks fit, in its absolute discretion discharge a jury at any time before the jury gives its verdict; and in any such case the trial shall be started afresh with a new jury; and this Part shall have effect accordingly.

Verdict

536 (1) Subject to subsection (2), a verdict found in respect of any issue falling to be tried by a jury shall be unanimous and shall be delivered by the foreman of the jury in open court in the presence of the remaining members of the jury.

(2) Where a jury have been in deliberation for not less than one hour, it shall be competent for nine or more of the jurors to find any lawful verdict and any such verdict shall have the same force and effect as if it had been found unanimously by the jury.

(3) In the event that, because of section 525, a jury is reduced to ten or nine members, subsection (2) shall be read with "eight" in place of "nine".

[Section 536 subsection (3) inserted by 2015 : 37 s. 18 effective 6 November 2015]

Validity of verdict returned on public holiday

537 The taking of a verdict is not invalid by reason of its happening on a Sunday or other public holiday.

Effect of service of nonqualified juror

538 Notwithstanding anything in the foregoing provisions of this Part, where a person—

(a) being a person not qualified to serve as a juror, is drawn or selected as a juror, and is not challenged in pursuance of section 519; or

(b) who, although qualified to serve as a juror, was not duly returned to serve as a juror under any provision of law for the time being having effect with respect to the selection and service of jurors at that particular trial,

then in any such case, if after being sworn he subsequently serves as a juror, such service shall not invalidate or affect any verdict found by the jury, and all proceedings of the jury shall be as valid and effectual as if he had been duly qualified to serve as a juror.

Procedure on charge of an offence committed after previous conviction

539 The proceedings upon an indictment for committing an offence after a previous conviction or convictions are required to be as follows—

(a) the accused person shall in the first instance be called upon to plead to so much only of the indictment as charges the subsequent offence;

(b) if the accused person pleads any plea which raises an issue to be tried by a jury, the jury shall be charged in the first instance to inquire concerning the subsequent offence only;

(c) if the accused person pleads guilty, or if upon his trial he is convicted of the subsequent offence, he shall then, and not before, be asked whether he had been previously convicted, as alleged in the indictment;

(d) if the accused person admits that he has been so previously convicted, the Supreme Court may proceed to pass sentence upon him accordingly;

(e) if the accused person denies that he has been so previously convicted, 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 is not necessary that the jury should be sworn afresh, but the

oath already taken by them is deemed to extend to such last mentioned inquiry:

Provided that, if on the trial of a person charged with a subsequent offence, he offers evidence of his good character, the Crown may, in answer thereto, and before any verdict is given, offer evidence of his conviction of the previous offence or offences; and in that case the jury are required to inquire concerning the previous conviction or convictions at the same time that they inquire concerning the subsequent offence.

Criminal Procedure Rules

540 (1) There are to be rules of court (to be called "Criminal Procedure Rules"), not inconsistent with this Act or any other enactment, governing the practice and procedure to be followed in the criminal jurisdiction (original, appellate or otherwise) of the magistrates' court and Supreme Court.

(2) Without limiting the generality of subsection (1) or any other enactment or provision relating to criminal procedure, such rules may—

(a) prescribe the manner in which applications and notices or notifications may be made or given (including whether orally or in writing), and the manner in which they may be responded to;

(b) prescribe the manner in which charging documents, applications, notices, and other documents are to be filed;

(c) prescribe the manner in which charging documents, summonses, warrants, applications, notices, and other documents are to be authenticated (including by signature or any other means);

(d) prescribe the manner in which summonses, warrants, notices, and other documents are to be issued by a court, a Registrar, or any other person;

(e) prescribe information that shall be contained in charging documents, summonses, warrants, applications, notices, and other documents to be filed, made, or given;

(f) prescribe forms for charging documents, summonses, warrants, applications, notices, and other documents, or other requirements relating to the form or presentation of documents;

(g) prescribe other information that may be required in connection with criminal proceedings and any requirements relating to the form and presentation of that information;

(h) require the service of any summons, application, or other document;

(i) prescribe who has responsibility for serving any summons, application, or other document;

(j) prescribe who may, on behalf of a person responsible as described in paragraph (i), serve any summons, application, notice, or other document;

(k) prescribe the procedure for the service of summonses, notices, and other documents;

(l) prescribe the manner of proving service;

(m) prescribe requirements relating to the custody of documents, exhibits, and other things connected with criminal proceedings;

(n) prescribe periods, or minimum or maximum periods, within which, or times or stages in the criminal proceedings before or after which, steps shall, or shall not, be taken;

(o) prescribe circumstances in which a judicial officer may grant leave for applications or any other matter to be made or done later than a time prescribed in the rules;

(p) impose duties on Registrars, and prescribe the manner in which Registrars shall carry out any action for the purposes of criminal proceedings;

(q) prescribe procedures relating to the delivery of judgments and other decisions in criminal proceedings;

(r) prescribe the manner in which criminal proceedings are to be transferred between courts;

(s) prescribe matters relating to the permanent court record, including—

(i) the formal steps in a proceeding that shall be recorded;

(ii) the manner in which the permanent court record shall be maintained;

(iii) who may discharge courts' obligations to maintain the permanent court record;

(iv) procedures for ensuring the accuracy of the permanent court record;

(v) procedures for correcting the permanent court record;

(t) prescribe the manner in which a record of oral evidence is to be authenticated;

(u) provide for the establishment, form, and maintenance of registers of notices of appeal and judgments, and provide for the registers to be available for inspection by members of the public in accordance with the rules;

(v) provide for any other matters in respect of which rules are contemplated by this or any other Act pertaining to criminal procedure.

(3) Without limiting the generality of subsection (1), rules may provide for the use of electronic technology in relation to any matter described in subsection (2).

(4) Rules are to be made by the Chief Justice, following consultation with the Senior Magistrate, the Director of Public Prosecutions, the Bar Council and such other persons as the Chief Justice may consider appropriate.

(5) The power to make rules includes power to make different provision for different cases, offences or classes of prosecutor or accused persons, including different provision—

(a) for a specified court or description of courts;

(b) for specified descriptions of proceedings or a specified jurisdiction.

(6) Any power to make rules is to be exercised with a view to securing that—

(a) the criminal justice system is accessible, fair and efficient; and

(b) the rules are both simple and simply expressed.

(7) Rules made under this section are subject to the negative resolution procedure.

[Section 540 repealed and substituted by 2013 : 6 s. 2 effective 28 March 2013; repealed and replaced by 2015 : 37 s. 18 effective 6 November 2015]

Procedure in summary proceedings

541 The procedure upon the prosecution of offenders with a view to their summary conviction, and for enforcing summary convictions and orders made by courts of summary jurisdiction upon such prosecutions, is set forth in the Acts relating to the powers, procedure and practice of courts of summary jurisdiction.

Power to clear court while child is giving evidence in criminal proceedings

542 *[Repealed by 2019 : 36 s. 30]*

[Section 542 repealed by 2019 : 36 s. 30 effective 1 November 2019]

Measures to protect the complainant etc. in certain circumstances

542A (1) *[Repealed by 2019 : 36 s. 31]*

(2) *[Repealed by 2019 : 36 s. 31]*

(3) Where an accused is charged with a sexual offence, a judge or a magistrate may make an order directing that the identity of a witness, or any information that could disclose the identity of a witness, shall not be published in a written publication available to the public, or be broadcast.

(4) Where an accused is charged with a sexual offence—

(a) the prosecutor or a judge or a magistrate shall at the first reasonable opportunity inform any witness under the age of sixteen years of his right to make an application for an order under subsection (3); and

(b) if an application for an order under subsection (3) is made by the prosecutor or such a witness to a judge or a magistrate, the judge or magistrate shall make an order under that subsection.

(5) Any person who, without lawful excuse, the proof of which shall be on him, contravenes an order made under subsection (3) is guilty of a summary offence, and is liable on conviction to a fine of $5,000.

[Section 542A added by 1993 : 2 effective 1 June 1993; Section 542A subsection (1) and (2) repealed by 2019 : 36 s. 31 effective 1 November 2019]

Power to clear court during taking of evidence in particular cases

543 *[Repealed by 2019 : 36 s. 32]*

[Section 543 repealed by 2019 : 36 s. 32 effective 1 November 2019]

PART XXVIA

EVIDENCE ON COMMISSION

Order appointing commissioner

543A In any criminal proceedings a party to such proceedings may apply for an order appointing a commissioner to take the evidence of a witness who—

(a) is, by reason of—

(i) physical disability arising out of illness; or

(ii) some other good and sufficient cause, not likely to be able to attend at the time the trial is held; or

(b) is out of Bermuda and is not likely to be able to attend or is unwilling to attend, at the time the trial is held; or

(c) is out of Bermuda and the other party to the proceedings consents to the application.

Application made to a Judge only granted if it is in the interest of justice

543B (1) An application for an order under section 543A shall be made to a Judge and shall only be granted if the court is satisfied that it is in the interest of justice to grant such an order.

(2) An application under section 543A(a)(i) may be granted on the evidence of a registered medical practitioner.

Matters to be included in order

543C (1) A Judge who appoints a commissioner shall make provision in the order—

(a) for the evidence of a witness to be taken by means of audio-visual equipment on such terms and in such manner as may be provided in the order;

(b) to enable an accused to be present or represented by counsel when the evidence is taken, but the failure of the accused to be present or to be represented by counsel in accordance with the order shall not prevent the evidence from being admitted in the proceedings if the evidence has otherwise been taken in accordance with the order and with this Part;

(c) indicating the officer of the court to whom the evidence that is taken under the order shall be returned.

Admissibility of evidence taken by a commissioner

543D Where the evidence of a witness is taken by a commissioner under this Part it shall, on its production, be admitted as evidence in the proceedings, subject only to any ruling of the trial Judge or the magistrate, as the case may be, as to the admissibility of any part of the evidence, if it is proved to the satisfaction of the court that reasonable notice of the time for taking the evidence was given to the other party, and that the accused or his counsel, or the prosecutor or his counsel, as the case may be, had or might have had full opportunity to cross-examine the witness.

Rules and practice same as in civil proceedings

543E (1) Except where otherwise provided by this Part or by rules of court, the practice and procedure in connection with the appointment of commissioners under this Part, the certifying and return of evidence by commissioners, and the use of the evidence in the proceedings shall, as far as possible, be the same as those that govern like matters in civil proceedings in the Supreme Court.

(2) The power to make rules of court under section 62 of the Supreme Court Act 1905 [*title 8 item 1*] shall include power to make rules of court for the purpose of supplementing the provisions of this Part.

PART XXVII

JUDGMENT; COSTS; COMPENSATION AND RESTITUTION OF PROPERTY

Discharge of persons acquitted

544 If the jury find that the accused person is not guilty, or give any other verdict which shows that he is not liable to punishment, he is, subject to section 546 (acquittal on grounds of insanity), entitled to be discharged from the charge of which he is so acquitted, or with respect to which such other verdict was given.

Accused person insane at trial

545 (1) If on the trial of any person charged with an indictable offence the jury find that he is insane, the Supreme Court shall require such finding to be recorded, and shall order him to be kept in strict custody, in such place and in such manner as the Court thinks fit, until the pleasure of the Governor is known.

(2) A person so found to be insane may be again called upon to plead to the indictment and be tried for the offence.

(3) If a person charged with an indictable offence and brought before the Supreme Court to be discharged for want of prosecution appears to be insane, the Court shall order a jury to be empanelled to try his sanity; and if the jury find him to be insane, the Court shall order him to be kept in strict custody, in such place and in such manner as the Court thinks fit, until the pleasure of the Governor is known.

(4) Where any person is found to be insane under the this section, or section 514 (a person found unfit to plead), the Governor, acting after consultation with the Advisory Committee on the Prerogative of Mercy established under section 23 of the Constitution (hereinafter referred to as "the Committee") shall give such order as he thinks fit for the removal to, and safe custody of such person in, a hospital.

[Section 545 amended by 1998 : 32 effective 13 July 1998]

Acquittal on ground of insanity

546 (1) If, on the trial of a person charged with any indictable offence, it is alleged or appears that he was insane at the time when such act or omission alleged to constitute the offence occurred, the jury are to be required to find specially, if they find that he is not guilty, whether he was insane at the time when such act or omission took place, and to say whether he is acquitted by them on account of such insanity; and if they find that he was insane at the time when such act or omission took place, and say that he is acquitted by them on account of such insanity, the Supreme Court shall order him to be kept in strict custody, in such place and in such manner as the Court thinks fit, until the pleasure of the Governor is known.

(2) In any such case the Governor, acting after consultation with the Committee, shall give such order as he thinks fit for the removal to, and safe custody of such person in, a hospital.

[Section 546 amended by 1998 : 32 effective 13 July 1998]

Convicted person to be called on to show cause why sentence should not be passed

547 When an accused person pleads that he is guilty of any offence, and when, upon trial, an accused person is convicted of any offence, the proper officer of the Supreme Court is required to ask him whether he has anything to say why sentence should not be passed upon him; but an omission to do so does not invalidate the judgment.

Arrest of judgment

548 (1) A person convicted of an indictable offence, whether on his plea of guilty or otherwise, may at any time before sentence move that judgment be arrested on the ground that the indictment does not disclose any offence.

(2) Upon the hearing of the motion the Supreme Court may allow any such amendment of the indictment as it might have allowed before verdict.

(3) The Supreme Court may either hear and determine the motion forthwith, or may reserve the question of law for consideration at a subsequent sitting of the Court.

Sentence

549 (1) If a motion to arrest judgment is not made or is dismissed, the Supreme Court may either pass sentence upon the offender forthwith or at an adjourned sitting of the Court or. may discharge him on his recognizance, as hereinbefore provided, conditioned that he shall appear and receive judgment at some future sitting of the Court, or when called upon.

(2) If sentence is not passed forthwith, the Supreme Court may at any subsequent sitting at which the offender is present pass sentence upon him.

(3) The Supreme Court may, before passing sentence, receive such evidence as it thinks fit, in order to inform itself as to the sentence proper to be passed.

Recording sentence of death

550 *[Deleted by 1999:51]*

[Section 550 deleted by 1999:51 s.4 & Sch effective 23 December 1999]

Requirements prior to imposing sentence of preventive detention

551 *[Repealed by 2001:29]*

[Section 551 repealed by 2001:29 s.8 effective 29 October 2001]

Evidence and notice prior to ordering police supervision

552 (1) Notwithstanding anything in sections 484 and 539 (which sections relate to the procedure with respect to charges of previous offences), for the purpose of determining whether an offender is liable under Part IV to be ordered to be subject to police supervision no account shall be taken of any previous conviction or sentence unless notice has been given to the offender, and to the Registrar, at least three days before his trial that it is intended to prove the conviction or sentence; and unless any such previous conviction or sentence is admitted by the offender the question shall be determined by the verdict of a jury in the manner mentioned in section 539(e).

(2) For the purposes of this section, evidence that a person has previously been ordered to be subject to police supervision, shall be evidence of the convictions or sentences which rendered him liable to that order.

[Section 552 amended by 2001:29 s.9 effective 29 October 2001]

Sentence on pregnant women convicted of offence punishable with death

553 *[Deleted by 1999:51]*

[Section 553 deleted by 1999:51 s.4 & Sch effective 23 December 1999]

Orders relating to custody of child involved in sexual case

554 (1) When on the trial of a person charged with any of the sexual offences as defined in section 329D it is proved to the satisfaction of the Supreme Court that the seduction or prostitution of a child has been caused, encouraged, or favoured, by the child's father, mother, or guardian, the Supreme Court may make an order divesting

such father, mother, or guardian, of all authority over the child, and may appoint any person or persons who is or are willing to take charge of the child to be the child's guardian or guardians until he has attained the age of eighteen years, or any such age under eighteen years as the Court may direct.

(2) The Court or a judge may from time to time rescind or vary any such order by the appointment of any other person or persons as such guardian or guardians, or in any other respect.

[Section 554 subsection (1) amended by 2001:20 s.7(1) & Sch 2 effective 1 November 2001; Section 554 amended by 2019 : 36 s. 33 effective 1 November 2019]

Payment of costs by private prosecutor

555 (1) Where a private prosecutor has, under section 485(2)(c), obtained the consent of a judge to prefer a bill of indictment and does not prefer the bill before the next Regular Criminal Sessions of the Supreme Court, or after any such bill has been duly signed by the Registrar of the Court, does not duly proceed therewith, then in any such case the Court may order him to pay to the accused person the whole or any part of the costs properly incurred in or about the defence.

(2) Where a person is acquitted on any indictment preferred before the Supreme Court by a private prosecutor with consent of a judge as aforesaid, the Court may order the prosecutor to pay to the acquitted person the whole or any part of the costs properly incurred in or about the defence.

Taxation and enforcement of payment of costs

556 (1) Costs of prosecution or defence when ordered to be paid, shall be taxed by the Registrar as between party and party, and payment thereof may be enforced in the same manner in which an order for costs is enforced in an action in the Supreme Court.

(2) In this section—

(a) "costs of prosecution" includes costs incurred by the person aggrieved, with a view to the sending of the offender; and

(b) "costs of defence" includes costs incurred by the accused person both before and after his sending.

[Section 556 subsection (2) amended by 2015 : 38 s. 89 effective 6 November 2015]

556A Costs against barristers and attorney, and representatives etc.

556A (1) In any criminal proceedings—

(a) the Court of Appeal;

(b) the Supreme Court; and

(c) the magistrates' court,

may order the barrister and attorney or other representative concerned to meet the whole of any wasted costs or such part of them as may be determined in accordance with rules of the court.

(2) In subsection (1), "wasted costs" means any costs incurred by a party—

(a) as a result of any improper, unreasonable, or negligent act or omission on the part of any barrister and attorney, representative or any employee of a barrister and attorney or of a representative; or

(b) which, in the light of any such act or omission occurring after they were incurred, the court considers it is unreasonable to expect that party to pay.

(3) An order under subsection (1) may be made on the court's own motion or on application by any party to the proceedings to which the order may relate.

(4) An order made under subsection (1) may be appealed to the —

(a) Supreme Court, where made in the magistrates' court; or

(b) Court of Appeal, where made in the Supreme Court.

(5) No further appeal from a decision made under subsection (4) may be permitted.

(6) In this section—

"representative" means a person, other than a barrister and attorney or a prosecutor, permitted by the court to represent an accused person in court proceedings.

[Section 556A inserted by 2015 : 37 s. 18 and amended by BR 89 / 2015 reg. 6 effective 6 November 2015]

Provision for award of costs against third parties

556B (1) The Minister may by regulations make provision empowering the magistrates' courts, the Supreme Court and the Court of Appeal to make a third party costs order if the conditions in subsection (3) are satisfied.

(2) A "third party costs order" is an order as to the payment of costs incurred by a party to criminal proceedings by a person who is not a party to those proceedings ("the third party").

(3) The conditions are that—

(a) there has been serious misconduct (whether or not constituting a contempt of court) by the third party; and

(b) the court considers it appropriate, having regard to that misconduct, to make a third party costs order against him.

(4) Regulations made under this section may, in particular—

(a) specify types of misconduct in respect of which a third party costs order may be made;

(b) allow the making of a third party costs order at any time;

(c) make provision for any other order as to costs which has been made in respect of the proceedings to be varied on, or taken account of in, the making of a third party costs order;

(d) make provision for account to be taken of any third party costs order in the making of any other order as to costs in respect of the proceedings.

(5) Regulations made under this section are subject to the negative resolution procedure.

[Section 556B inserted by 2015 : 37 s. 18 effective 6 November 2015]

Powers of court to order compensation etc upon conviction of offence involving assault

557 *[Repealed by 2001:29]*

[Section 557 repealed by 2001:29 s.10 effective 29 October 2001]

Power of court to order compensation upon conviction of offence involving injury to property

558 *[Repealed by 2001:29]*

[Section 558 repealed by 2001:29 s.10 effective 29 October 2001]

Power of court to make order requiring payment of compensation etc where probation order etc is made

559 *[Repealed by 2001:29]*

[Section 559 repealed by 2001:29 s.10 effective 29 October 2001]

Compensation orders

560 *[Repealed by 2001:29]*

[Section 560 repealed by 2001:29 s.10 effective 29 October 2001]

Assessment and appropriation of fines imposed by courts of summary jurisdiction, on basis of value of property taken etc

561 *[Repealed by 2001:29]*

[Section 561 repealed by 2001:29 s.10 effective 29 October 2001]

Restitution of property on conviction of offender

562 *[Repealed by 2001:29]*

[Section 562 repealed by 2001:29 s.10 effective 29 October 2001]

[Assent Date: 22 March 1907]

NOTE The Table attached to the Memorandum explanatory of the Bill entitled "The Criminal Code Act 1906" shows the sources from which the original clauses of the Bill were derived

NOTE For particulars of the Acts which were repealed on 1 September 1908 when the Criminal Code came into operation see 1952 Revision page 554 and for list of Acts amending or repealing various provisions of the Criminal Code up to 1952 see page 556; for those between 1952 Revision and 1971 Revision see 1971 Revision Title 8 Item 31 page 206

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