

Country Code:	BB 1994 ACT 18
Title:	OFFENCES AGAINST THE PERSON ACT
Country:	BARBADOS
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Date of Amendment:	
Subject:	Children – Law - Barbados
Key words:	Abortion; Child stealing; Concealment of birth; Endangering life of children; Infanticide

OFFENCES AGAINST THE PERSON ACT, 1994 - 18

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SCHEDULE

BARBADOS

I assent
R. NITA BARROW
Governor-General
8th April, 1994.

1994 -18

An Act to revise and amend the law with respect to offences against the person.

Commencement

(1st September, 1994.)

ENACTED by the Parliament of Barbados as follows:

Short title

1. This Act may be cited as the *Offences Against the Person Act, 1994*.

PART I

Murder and Manslaughter

Punishment for murder

2. Any person convicted of murder shall be sentenced to, and suffer, death.

Abolition of constructive malice

3. (1) Where a person kills another in the course or furtherance of some other offence, the killing shall not amount to murder unless done with the same malice aforethought, express or implied, as is required for a killing to amount to murder when not done in the course or furtherance of another offence.

(2) For the purposes of subsection (1), a killing done in the course or for the purpose of resisting an officer of justice, or of resisting or avoiding or preventing a lawful arrest, or of effecting or assisting an escape or rescue from legal custody, shall be treated as a killing in the course or furtherance of an offence.

Diminished responsibility

4. (1) Where a person kills or is party to the 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 cause 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 is by virtue of this section not liable to be convicted of murder.

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

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

(5) Where on a trial for murder the accused contends

- (a) that at the time of the alleged offence he was insane so as not to be responsible according to law for his actions, or
- (b) that at the time he was suffering from such abnormality of mind as is specified in subsection (1),

the court shall allow the prosecution to adduce- or elicit evidence tending to prove the other of those contentions and may give directions as to the stage of the proceedings at which the prosecution may adduce such evidence.

(6) Where on a trial for murder

- (a) evidence is given that the accused was at the time of the alleged offence suffering from such abnormality of mind as is specified in subsection (1); and
- (b) the accused is convicted of manslaughter,

the court shall require the jury to declare whether the accused was so convicted by them on the ground of such abnormality of mind, and, if the jury declare that the conviction was on that ground, the court may instead of passing such sentence as is provided by law for that offence, order the person so convicted to be detained in custody, in such place as the court appoints, until Her Majesty's pleasure is known, and thereupon the Governor-General on behalf of Her Majesty may give such order for the safe custody of the person during Her Majesty's pleasure as the Governor-General thinks fit.

(7) The Governor-General acting in his discretion may by instrument in writing order the discharge, either absolutely or on such conditions as to the duration of the discharge or otherwise as he thinks fit, of a person ordered to be detained under subsection (6).

Provocation

5. Where on a charge of murder there is evidence on which the jury can find that the accused was provoked, whether by things done or by things said or by both together, to lose his self-control, the question whether the provocation was enough to make a reasonable man do as he did shall be left to be determined by the jury; and in determining that question, the jury shall take into account everything both done and said according to the effect which, in their opinion, it would have on a reasonable man.

Punishment for manslaughter

6. Any person convicted of manslaughter is liable to be sentenced to imprisonment for life.

Jurisdiction in special circumstances

7. Where any person being stricken, poisoned or otherwise hurt upon the sea or in the air or at any place outside Barbados, dies of such stroke, poisoning or hurt in Barbados or, being stricken, poisoned or hurt at any place in Barbados, dies of such stroke, poisoning or hurt upon the sea or in the air or at any other place outside Barbados, any offence committed in respect of any such case, including an offence of murder or manslaughter may be dealt with, enquired into, tried, determined and published in Barbados in the same manner in all respects as if it had been wholly committed in Barbados.

Killings special cases

8. (1) A person charged with the murder or manslaughter of another shall, although his act was not the immediate or the sole cause of that other's death, be deemed to have killed that other where

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- (a) he inflicted bodily injury on that other person in consequence of which that other person underwent surgical or medical treatment which caused death;
- (b) he inflicted bodily injury on that other person which would not have caused the death of that other person had he submitted to proper surgical or medical treatment or observed proper precautions as to his mode of living;
- (c) by actual or threatened violence he caused that other person to perform an act which caused his death, such act being a means of avoiding such violence which in the circumstances would have appeared natural to the person whose death was so caused;
- (d) by any act or omission he hastened the death of that other person from any disease or injury which apart from such act or omission would have caused death; or
- (e) his act or omission would not have caused death unless it had been accompanied by an act or omission of the person killed or of other persons.

(2) In the circumstances specified in paragraph (a), it is immaterial whether the treatment was proper or mistaken if it was employed in good faith and with common knowledge and skill.

Attempt to murder

9. Any person who
- (a) attempts unlawfully to kill another, or
 - (b) with intent unlawfully to kill another does any act, or omits to do any act which it is his duty to do, the act or omission being of such a nature as to be likely to endanger human life,

is guilty of an offence and is liable on conviction on indictment to imprisonment for life.

Sending letters threatening to murder.

10. Any person who maliciously sends, delivers or utters, or directly or indirectly causes to be received, knowing the contents thereof, any letter or writing threatening to kill or murder another person is guilty of an offence and is liable on conviction on indictment to imprisonment for a term of ten years.

Conspiracy to murder.

10. Any person who conspires with any other person to kill any person, whether such person is in Barbados or elsewhere, commits an offence and is liable on conviction on indictment to imprisonment for a term of fourteen years.

Aiding suicide.

11. (1) Any person who
 - (a) procures another to kill himself; or
 - (b) counsels another to kill himself and thereby induces him to do so; or
 - (c) aids another in killing himself,

is guilty of an offence and is liable on conviction on indictment to imprisonment for a term of fourteen years.

(2) No proceedings shall be instituted for an offence under this section except by or with the consent of the Director of Public Prosecutions.

Suicide pacts.

13. (1) It shall be manslaughter, and shall not be murder, for a person acting in pursuance of a suicide pact between himself and another to kill the other or be a party to the other 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 himself and the other.

(3) For the purposes 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.

Infanticide.

14. Where a woman by any wilful act or omission causes the death of her child being under the age of twelve months, but at the time of the act or omission the balance of her mind was disturbed by reason of her not being fully recovered from the effect of giving birth to the child or by reason of the effect of lactation consequent on the birth of the child, then notwithstanding that the circumstances were such that but for the provisions of this section the offence would have amounted to murder, she is guilty of infanticide, and may be dealt with and punished as if she had been guilty of manslaughter of the child.

PART II

Causing Danger to life or Bodily Harm

Preventing survival.

15. Any person who without lawful authority or reasonable excuse prevents or impedes any person in his attempt to save the life of himself or another person, being a person other than the accused, or to save himself or that other person from suffering serious bodily harm is guilty of an offence and is liable on conviction on indictment to imprisonment for life.

Acts intended to cause serious bodily harm or to prevent arrest

16. Any person who with intent to maim, disfigure or disable any person, or to do some serious bodily harm to any person, or to resist or prevent the lawful arrest of any person, unlawfully wounds or does any serious bodily harm to any person by any means whatever is guilty of an offence and is liable on conviction on indictment to imprisonment for life.

Inflicting bodily injury.

17. Any person who unlawfully and maliciously wounds or inflicts any serious bodily harm upon any other person, either with or without any weapon or instrument, is guilty of an offence which is triable on indictment or summarily.

Disabling in order to commit indictable offence.

18. Any person who by any means whatever and with intent to commit any offence punishable on indictment or to assist any other person in committing any such offence, renders or attempts to render any person incapable of resistance, is guilty of an offence and is liable on conviction on indictment to imprisonment for life.

Endangering life or safety.

19. Any person who unlawfully and maliciously or recklessly engages in conduct which places, or may place, another person in danger of death or serious bodily harm is guilty of an offence and is liable on conviction on indictment to imprisonment for life.

Endangering life or health of apprentices and servants.

20. Any person being legally liable either as a master or mistress to provide for any apprentice or servant, necessary food, clothing or lodging, who wilfully and without lawful excuse refuses or neglects to provide the same, or does or causes to be done any bodily harm to any such apprentice or servant, so that the life of such apprentice or servant is endangered or the health of such apprentice or servant is or is likely to be permanently injured, is guilty of an offence which is triable on indictment or summarily.

Exposing children whereby life is endangered.

21. Any person who unlawfully abandons or exposes any child, being under the age of two years, whereby the life of such child is endangered or the health of that child is or is likely to be permanently injured, is guilty of an offence which is triable on indictment or summarily.

Causing injury by use of explosives

22. Any person who unlawfully causes injury to another person by the use of any explosive substance is guilty of an offence and is liable on conviction on indictment to imprisonment for life.

Placing explosives near building or ship with intent to do bodily injury

23. Any person who unlawfully and maliciously, with intent to do any bodily injury to any person, places or throws in, into, upon, against or near any building, ship or vessel any gunpowder or other explosive substance, whether or not any explosion takes place and whether or not any bodily injury is effected, is guilty of an offence and is liable on conviction on indictment to imprisonment for a term of fourteen years.

Injuring persons by furious driving

24. Any person, having the charge of an carriage or vehicle who, by wanton or furious driving or racing or other wilful misconduct or by wilful neglect does or causes to be done any bodily harm to any person whatsoever, is guilty of an offence which is triable on indictment or summarily.

PART III

Assaults

Common assault

25. Any person who unlawfully assaults another is guilty of an offence which is triable on indictment or summarily.

Assaults occasioning harm

26. Any person who assaults another occasioning the other actual bodily harm is guilty of an offence which is triable on indictment or summarily.

Other assaults

27. Any person

- (a) who assaults any person with intent to commit an offence punishable on indictment or to resist or prevent the lawful apprehension or detention of himself or of any other person for any offence; or
- (b) who assaults, resists or obstructs any person engaged in lawful execution of process, or in making a lawful distress, with intent to rescue any property lawfully taken under such process or distress; or
- (c) who assaults any person on account of any act done by him in the execution of any duty imposed on him by law;

is guilty of an offence which is triable on indictment or summarily.

Dismissal . of complaints of assaults

28. Where a court, upon the hearing of a case of common assault, deems the offence not to be proved or finds the assault to be justified or to be so trifling as not to merit punishment, it may dismiss the charge and discharge the offender accordingly.

Other proceedings barred under certain conditions

29. Any person who having *been* convicted of common assault and having suffered the punishment awarded, or having been discharged under the last section, shall be released from all further or other proceedings, civil or criminal, for the same cause.

PART IV

Offences Against Liberty

Kidnapping

30. Any person who unlawfully removes another from any place without that other's consent or the consent of some person legally authorised to consent on that other's behalf is guilty of kidnapping and is liable on conviction on indictment to imprisonment for life.

Wrongfully concealing or keeping in confinement kidnapped or abducted person

31. Any person who, knowing that any person has been kidnapped or abducted, wrongfully conceals or confines such person, is guilty of an offence and shall be punishable in the same manner as if he had kidnapped or abducted that person with the same intention or knowledge as that with which he conceals or detains such person in confinement.

Wrongful confinement

32. Whoever wrongfully confines any person is guilty of an offence which is triable on indictment or summarily.

Buying or disposing of person as slave

33. Any person who imports, exports, removes, buys, sells or disposes of any person as a slave, or accepts, receives or detains against his will any person as a slave is guilty of an offence and is liable on conviction on indictment to imprisonment for life.

Unlawful compulsory labour

34. Any person who unlawfully compels any person to labour against the will of that person is guilty of an offence and is liable on summary conviction to imprisonment for a term of six months.

PART V

Child Stealing

Child stealing

35. (1) Any person who

- (a) unlawfully, either by force or fraud, leads or takes away or decoys or entices away or detains any child under the age of fourteen years, with intent to deprive any parent, guardian or other person having the lawful care or charge of such child of the possession of such child or with intent to steal any article upon or about the person of such child to whomsoever such article may belong; or
- (b) with any such intent receives or harbours any such child, knowing the same to have been by force or fraud, led, taken, decoyed, enticed away or detained as described in paragraph (a),

is guilty of an offence and is liable on conviction on indictment to imprisonment for a term of seven years.

(2) No person who has claimed any right to the possession of a child referred to in subsection (1), or is the mother or has claimed to be the father of that child shall be liable to be prosecuted by virtue of this section on account of the getting possession of the child or taking the child out of the possession of any person having the lawful charge thereof.

(3) Any person who, with intent to send away any child under the age of sixteen years from Barbados for the purpose of being employed in any other place and without the knowledge of the parent or parents or the person having the care, charge or custody of the child, sends or carries away or causes or procures to be sent or carried away from Barbados that child is guilty of an offence which is triable on indictment or summarily.

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PART VI

Bigamy

Bigamy

36. (1) Any person who, being married, marries another during the life of the husband or wife, whether the second marriage takes place in Barbados or elsewhere, is guilty of bigamy and is liable on conviction on indictment to imprisonment for seven years.

(2) An offence under subsection (1) may be dealt with, enquired of, tried, determined and punished in Barbados in the same manner in all respects as if the offence had been actually committed in Barbados.

(3) Nothing in this section shall extend to

- (a) any second marriage contracted elsewhere than in Barbados by a person not a citizen of Barbados;
- (b) any person marrying a second time whose husband or wife has been continuously absent from such person for the space of seven years then last past and has not been known by such person to be living within that time;
- (c) any person who at the time of such second marriage has been divorced from the bond of the first marriage; or
- (d) any person whose former marriage has been declared void by the decree or order of any court.

PART VII

Abortion and Concealment of Birth

Administering drugs or using instruments to procure abortion

37. Any person who

- (a) being a woman with child, with intent to procure her own miscarriage unlawfully administers to herself any poison or other noxious thing, or unlawfully uses any instrument or other means whatsoever, or
- (b) with intent to procure the miscarriage of any woman, whether she is or is not with child, unlawfully administers to her or causes to be taken by her any poison or other noxious thing or unlawfully uses any instrument or other means whatsoever,

is guilty of an offence and is liable on conviction on indictment to imprisonment for life.

Killing unborn child

38. Any person who, when a woman 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 an offence and is liable on conviction on indictment to imprisonment for life.

Surgical Operation

39. A person is not criminally responsible for performing in good faith and with reasonable care and skill a surgical operation upon any person for her 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.

Supplying or procuring drugs or instruments to cause abortion

40. Any person who unlawfully supplies or procures any poison or other noxious thing or any instrument or other thing whatsoever, knowing that the same is intended to be unlawfully used or employed with intent to procure the miscarriage of any woman, whether she is or is not with child, is guilty of an offence which is triable on indictment or summarily.

Concealment of birth of child

41. Where any woman is delivered of a child, every person who, by any secret disposition of the dead body, whether such child died before, at or after its birth, endeavours to conceal the birth thereof is guilty of an offence which is triable on indictment or summarily.

PART VIII

Offences of Indecency

Indecent acts

42. Any person who

- (a) wilfully and without lawful excuse does any indecent act in any public place; or
- (b) wilfully does any indecent act in any place with intent to insult or offend any person,

is guilty of an offence which is triable on indictment or summarily.

PART IX

Miscellaneous and General

Possessing or making dangerous things to commit offences

43. Any person who knowingly has in his possession or makes or manufactures any gunpowder, explosive substance or any dangerous or noxious thing, or any machine, engine, instrument or thing, with intent by means thereof to commit or for the purpose of enabling any other person to commit any offence against this Act is guilty of an offence which is triable on indictment or summarily.

Punishment for offences

44. Subject to any express provision of this Act,

- (a) a person convicted on indictment of an offence against this Act is liable to imprisonment for a term of ten years or to a fine or to both; and
- (b) a person convicted summarily of an offence against this Act is liable to imprisonment for a term of two years or to a fine of \$2 500 or to both.

Aiders, abettors and accessories

45. A person who aids, abets, counsels, procures or incites another to commit an offence against this Act is guilty of the like offence and may be proceeded against and punished as a principal offender.

Alternative verdicts

46. (1) If on the trial of an indictment for murder or manslaughter the jury are of the opinion that the accused aided, abetted, counselled or procured the suicide of the person in question, the jury may find him guilty of that offence.

(2) Where on the trial of a woman for the murder of her newly-born child the jury are of the opinion that she by any wilful act or omission caused its death, but at the time of the act or omission the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the child or by reason of the effect of lactation consequent on the birth of the child the jury may return a verdict of infanticide.

(3) Where any person tried for the murder of any child is acquitted thereof, it shall be lawful for the jury by whose verdict such person is acquitted to find, where it so appears in evidence, that the child had recently been born and that such person did, by some secret disposition of the dead body of such child, endeavour to conceal the birth thereof, and thereupon the court may pass such sentence as if such person had been convicted upon an indictment for the concealment of the birth.

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Arrest without warrant

47. Any person may take into custody without a warrant any person found committing or whom he has good cause to suspect of having committed or being about to commit any offence against this Act punishable on indictment and shall take such person as soon as reasonably may be before a magistrate to be dealt with according to law.

Recognisances and sureties for keeping the peace

48. (1) Where any person is convicted of any offence punishable under this Act otherwise than with death, the court may, if it thinks fit, in addition to or in lieu of any punishment by this Act authorised, require the offender to enter his own recognisance and to find sureties, both or either, for keeping the peace and being of good behaviour.

(2) No person shall be imprisoned for not finding sureties under this section for any period exceeding one year.

Repeals and amendments Schedule

49. (1) The enactments set out in Part I of the Schedule are hereby repealed to the extent specified in Column H of the said Part.

(2) The enactments set out in Part II of the Schedule are hereby amended in the manner specified in Column II of the said Part.

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SCHEDULE

(Section 50)

PART I

<i>Column I</i>	<i>Column II</i>
<i>The Infanticide Act Cap. 137</i>	The whole Act is repealed
<i>The Offences Against the Person Act, Cap. 141</i>	The whole Act is repealed.

PART II

<i>Column I</i>	<i>Column II</i>
<i>The Evidence Act Cap. 121</i>	In the First Schedule a reference to section 42 is substituted for the reference to section 66 in relation to the Offences Against the Person Act.
<i>The Civil Aviation (Montreal Convention) Act, Cap. 123A</i>	In the definition of "act of violence" in sub-section (1) of section 2 the words "section 16, 17, 18, 19, 22, or 23" are substituted for the words "section 15, 17, 18, 20, 21, 26, or 27".
<i>The Hijacking Act, Cap. 135A</i>	In section 3 the words "section 16, 17, 18, 19, 22 or 23" are substituted for the words "section 15, 17, 18, 20, 21, 26 or 27".
<i>The Juvenile Offender, Act Cap. 138</i>	In section 15 the word "serious" is substituted for the word "grievous".
<i>The Prevention of Cruelty to Children Act, Cap. 145</i>	The following paragraphs are substituted for paragraphs 1 and 2 of the Schedule
	"1. Any offence under
	(a) section 21 of <i>the Offences Against the Person Act</i> ;
Act 1991-3	(b) section 15 of the <i>Sexual Offences Act</i> ; or
	(c) section 56 of the <i>Sexual Offences Act</i> .
	(2) Any offence against a child under the age of sixteen years under

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Column I

Column II

(a) section 10; or

(b) section 11;

Act 1991-3 of the *Sexual Offences Act.*."

The Probation of Offenders Act Cap. 146

..... (Section 6).

The Reformatory and Industrial Schools Act Cap. 169

In paragraph (g) of subsection (1) of section 14 the words subsection (1) of "sections 4 and 5" of the *Sexual Offences Act, 1991* - are substituted for the words "section 48 or 49" of the *Offences Against the Person Act.*

The Extradition Act, Cap. 189

In paragraph 3 of the Schedule the words "serious bodily harm" are substituted for the words "grievous bodily harm"

Indictments Act Cap. 136

In Form 5 of the Forms of Indictment in the Appendix, the word "16" is substituted for the word "15".