

**A BILL
ENTITLED**

AN ACT to Amend the Criminal Justice (Suppression of Criminal Organizations) Act; to specify additional offences in which criminal organizations are engaged in order to fund their activities; to increase the number of offences under the Act; to expand the list of aggravating factors to be considered when sentencing an individual convicted of certain offences under the Act; to improve the trial procedure in order to protect the identity of witnesses; and for connected matters.

BE IT ENACTED by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, and by the authority of the same, as follows:-

**Short title
and con-
struction.**

1. This Act may be cited as the Criminal Justice (Suppression of Criminal Organizations) (Amendment) Act, 2021, and shall be read and construed as one with the Criminal Justice (Suppression of Criminal Organizations) Act (hereinafter referred to as the "principal Act") and all amendments thereto.

**Amendment
of section 2
of principal
Act.**

2. Section 2 of the principal Act is amended –

(a) by inserting the following definitions in the appropriate alphabetical sequence –

“ “applicable offence” means an offence specified in the First Schedule;

“conveyance” includes a motor vehicle, an aircraft, a vessel or other floating device or any other means of transport;

“vessel” has the meaning assigned to it in section 2 of the Shipping Act;”.

(b) in the definition of “criminal activity”, by deleting the words

“serious offence” and substituting therefor the words

“applicable offence”;

- (c) in paragraph (a) of the definition of “criminal organization”, by deleting the words “serious offences” and substituting therefor the words “applicable offences”;
- (d) by deleting paragraph (b) of the definition of “law enforcement officer” and renumbering paragraphs (c) to (g) as paragraphs (b) to (f); and
- (e) by deleting the definition of “serious offence”.

**Amendment
of section 6
of principal
Act.**

3. Section 6 of the principal Act is amended –

- (a) in the marginal note, by deleting the words “serious offence” and substituting therefor the words “applicable offence”;
- (b) in subsection (1)(b), by deleting the words “a serious offence” and substituting therefor the words “an applicable offence”;
- (c) in subsection (3) –
 - (i) by deleting the words “a serious offence” in paragraph (b) and substituting therefor the words “an applicable offence”;
 - (ii) by deleting the word “and” at the end of paragraph (f);
 - (iii) by deleting the fullstop at the end of paragraph (g) and substituting a semicolon; and
 - (iv) by inserting next after paragraph (g) as amended, the following –
 - “(h) any symbols or markings (whether in the form of tattoos or any other item), on or in the possession of the person, that indicate a link or involvement with the criminal organization.”.

- Amendment of section 7 of principal Act.** 4. Section 7 of the principal Act is amended in subsection (3) by deleting the word “and” at the end of paragraph (b).
- Amendment of section 8 of principal Act.** 5. Section 8 of the principal Act is amended in subsection (4) by deleting the word “and” at the end of paragraph (a).
- Insertion of new sections 8A and 8B in principal Act.** 6. The principal Act is amended by inserting next after section 8 as amended, the following –
- “Offence of using premises or conveyance for purposes which constitute an offence under this Act.**
- 8A. The owner, occupier or any person responsible for the management of any premises or conveyance, commits an offence where that owner, occupier or other person, knowingly causes or knowingly permits the premises or conveyance to be used for any purpose which constitutes an offence under this Act.
- Possession of property not accounted for.**
- 8B. In a trial for an offence under this Act, the fact that a person –
- (a) is in possession of property for which that person cannot satisfactorily account and which is disproportionate to the known sources of income of the person; or
- (b) had at or about the time of the alleged commission of the offence obtained an accretion to the person’s property for which the person cannot satisfactorily account,
- may be taken into consideration by the Court and is admissible as evidence to the extent relevant to any issue in the trial.”.

**Amendment
of section 10
of principal
Act.**

7. Section 10 of the principal Act is amended in subsections (1), (3) (a) and (4)(a), by deleting the words “a serious offence” and substituting therefor the words “an applicable offence”.

**Amendment
of section 11
of principal
Act.**

8. Section 11 of the principal Act is amended by deleting subsection (1) and substituting therefor the following –

“ (1) A person shall not, in order to gain a benefit, profess to be a part of, or a participant in, a criminal organization, or to be acting on behalf of, or on the instruction of, a criminal organization, whether by –

(a) telling anyone that the person is a part of, or a participant in, a criminal organization, or is acting on behalf of, or on the instruction of, a criminal organization; or

(b) otherwise suggesting to anyone that the person is a part of, or a participant in a criminal organization, or is acting on behalf of, or on the instruction of, a criminal organization.”

**Amendment
of section 15
of principal
Act.**

9. Section 15 of the principal Act is amended by deleting subsection (2) and substituting therefor the following –

“ (2) If an offence under –

(a) section 4 –

(i) is committed by a person on the premises or grounds of, or within three hundred metres of a school or any other educational institution; or

(ii) involves aiding, abetting, inciting or inducing an act of violence, as part of the process of recruitment;

(b) section 10(6), as relates to a contravention of section 10(3) or (4), is committed and the person incited or induced, is a

child;

(c) section 12 is committed against a child –

(i) by a person on the premises, on grounds of, or within three hundred metres of a school or any other educational institution; or

(ii) involves committing, aiding, abetting, inciting or inducing an act of violence in order to prevent, deter or obstruct a person from ceasing to –

(A) be a part of, or a participant in the activities of a criminal organization;

(B) provide a benefit to the criminal organization;

(d) section 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 or 13 is committed by a person who, at the time of the commission of the offence, has in that person's possession, any item of dress, designation or description, of a law enforcement officer; or

(e) section 3, 4, 5, 6, 7, 8, 8A, 9, 10, 11, 12, 13 or 14 is committed by a person who is, at the time of the commission of the offence, not a citizen of Jamaica,

the person shall be liable to imprisonment for an additional term, not exceeding ten years.”.

**Amendment
of section 17
of principal
Act.**

10. Section 17 of the principal Act is amended –

(a) by deleting the marginal note and substituting therefor the following –

**“Mode of
proceeding.”;**

(b) in subsection (2) by deleting the words “hearing a case in the exercise of its jurisdiction under this Act may” and substituting

therefor the words “that has jurisdiction to hear any case under this Act, may, at any stage before or during trial and with effect for such duration as the Court thinks fit (including any period of time after the conclusion of the trial)”; and

- (c) in subsection (4)(a), by deleting the words “one million dollars” and substituting therefor the words “three million dollars”.

**Amendment
of First
Schedule
to principal
Act.**

11. The First Schedule to the principal Act is amended –

- (a) in the heading, by deleting the words “*Serious Offences*” and substituting therefor the words “*Applicable Offences*”;

(b) by inserting next after Item 1, the following –

“1A. Any offence under the following provisions of the Betting, Gaming and Lotteries Act, namely –

- (a) section 48 (Offences in connection with lotteries);
 (b) section 49A (Licensing of lottery agent);
 (c) section 56 (Offences in relation to peaka peow and drop pan).”;

(c) by inserting next after Item 10, the following –

“10A. Any offence under the Explosives (Control of Manufacture) Act, that is to say, section 3 (No explosives to be manufactured without licence).”;

(d) by deleting Item 12 and substituting therefor the following –

“12. Any offence under the Fisheries Act, namely –

- (a) section 25 (Fishing, *etc.*, without a licence, authorization or permit and non-compliance with conditions);
 (b) section 26 (Prohibition of activities that undermine and contravene international or regional

- conservation or management treaty or agreement);
- (c) section 75 (Duty to comply with fishery inspector);
 - (d) section 76 (Offence of destruction of evidence and avoidance of seizure);
 - (e) section 77 (Offence of impersonating a fishery inspector);
 - (f) section 89 (Offences involving prohibited fishing methods and items in custody);
 - (g) section 91 (General offences involving fishing vessel, fishing devices, fishery inspectors and observers);
 - (h) section 92 (Offence of stealing from traps, *etc.*);
 - (i) section 94 (Offences relating to fishing in fish sanctuary or fish habitat).”;
- (e) by inserting next after Item 16, the following –
- “16A. Any offence under the Gunpowder and Explosives Act, that is to say, section 14 (Unlawful for any person to have in his possession any dangerous explosives without a licence).”;
- (f) by deleting Item 17 and substituting therefor the following –
- “17. Any offence under the Larceny Act, namely –
- (a) section 5 (Simple larceny);
 - (b) section 6 (Larceny of cattle);
 - (c) section 7 (Killing animals with intent to steal);
 - (d) section 13 (Praedial larceny);
 - (e) section 15 (Abstracting electricity);
 - (f) section 18 (Larceny in dwelling-houses);

- (g) section 19 (Larceny from the person);
 - (h) section 34 (Falsely acknowledging bail, etc.)
 - (i) section 35 (False pretences);
 - (j) section 37 (Robbery);
 - (k) section 38 (Sacrilige);
 - (l) section 39 (Burglary);
 - (m) section 40 (House-breaking and committing felony);
 - (n) section 41 (House-breaking with intent to commit felony);
 - (o) section 42A (Extortion);
 - (p) section 46 (Receiving).”;
- (g) in Item 19 by deleting the fullstop after paragraph (d) and substituting therefor a semicolon and inserting thereafter the following as paragraphs (e) and (f) –
- “(e) section 10 (Destroying house by explosion of gunpowder, person being therein);
 - (f) section 11 (Attempting to destroy building by explosion of gunpowder)”;
- (h) in Item 25 by renumbering paragraph (i) as paragraph (k) and insert the following as paragraphs (i) and (j) –
- “(i) section 29 (Causing bodily injury by explosion of gunpowder);
 - (j) section 30 (Causing gun powder to explode, *etc.*, with intent to do grievous bodily harm);”.

**Amendment
of Second
Schedule to
principal
Act.**

12. The Second Schedule to the principal Act is amended –
- (a) in the Third Column, in the penalty relating to the offence of “Recruitment of child to criminal organization”, by deleting the

words “; and where the offence is committed within three hundred metres of a school, or any other educational institution to imprisonment for an additional term not exceeding ten years”; and

- (b) by inserting next after the offence of “knowingly obtaining a benefit from criminal organization” and its attendant penalty, the following –

| | | |
|---|----|--|
| “Offence of knowingly causing or knowingly permitting premises or a conveyance to be used for any purpose which constitutes an offence under this Act | 8A | On conviction on indictment in a Circuit Court, to a fine or to imprisonment for a term not exceeding fifteen years.”. |
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Amendment of the Constabulary Force Act. 13. The Constabulary Force Act is amended –

- (a) in section 2, by inserting the following definitions in the appropriate alphabetical sequence –

““conveyance” includes a motor vehicle, an aircraft, a vessel or other floating device or any other means of transport;

“vessel” has the meaning assigned to it in section 2 of the Shipping Act;”;

- (b) by inserting next after section 17 the following –

“General power of search and seizure. 17A. – (1) The provisions of this section shall apply except to the extent that provisions in respect of the search for, or the seizure, disclosure or production of, information or any other thing are applicable under any other enactment.

(2) A Justice of the Peace, who is satisfied, on application made by a constable, that there are reasonable grounds to believe that –

(a) there is in a premises, a receptacle, a conveyance or place, any thing that –

(i) will afford evidence in respect of the commission of an offence against any law; or

(ii) has been used to commit an offence; and

(b) either –

(i) access to the thing will not be granted unless a warrant is produced;

(ii) the thing might be destroyed or rendered unavailable, unless a constable is able to seize it immediately; or

(iii) it is not reasonably practicable to communicate with any person entitled to grant access to the thing,

may at any time, issue a warrant,

authorizing a search of the premises, receptacle, conveyance or place, specified in the warrant, for the thing and authorizing the seizure of the thing in accordance with this section.

(3) A warrant under this section does not confer the right to seize, or obtain the disclosure of, any information, or other thing, that a person would be able to refuse to produce on the grounds of legal professional privilege.

(4) A warrant under this section shall identify, in such general or specific terms as the Justice considers appropriate in the circumstances, the things authorized to be searched for and seized.

(5) A constable who executes a warrant under this section, may seize, in addition to the things identified in the warrant, any thing that the constable believes, on reasonable grounds –

- (a) has been obtained by the commission of an offence under any law;
- (b) has been used in the commission of an offence under any law; or

- (c) will afford evidence in respect of an offence under any law.

(6) Where a constable has seized any thing under this section, the constable shall leave a notice, in the prescribed form, of the seizure at the premises, receptacle, conveyance or place, as the case may be, from which the thing was seized, and, as soon as reasonably practicable –

- (a) if satisfied that –

- (i) there is no dispute as to the person lawfully entitled to possession of the thing; and
- (ii) the continued detention of the thing seized is not required for the purposes of an investigation, or any court proceedings, in respect of the commission of an offence against any law, return the thing seized to the person lawfully entitled to possession of the thing; or

- (b) if satisfied that there is a dispute as to the person lawfully entitled to possession of the thing, apply to a

Judge of a Parish Court for an order under subsection (8)(a) or (c).

(7) A person claiming to be lawfully entitled to possession of a thing seized under this section may, at any time, after giving seven clear days' notice to the Director of Public Prosecutions, the person from whom the thing was seized if different from the applicant, and the constable who seized the item, apply to a Judge of a Parish Court for an order under subsection (8)(a) or (b) for the thing seized to be returned to the applicant.

(8) On an application under subsection (6)(b) or (7), as the case may be, the Judge shall –

- (a) order the thing seized to be returned to the person who the Judge determines is lawfully entitled to possession of same, unless satisfied that the detention of the thing seized is required for the purposes of an investigation, or any court proceedings, in respect of the commission of an offence against any law;

- (b) where the Judge is satisfied that the detention of the thing seized is required for the purposes of an investigation, or any court proceedings, in respect of the commission of an offence against any law, order that the thing seized be detained, and may include in the order such terms and conditions as the Judge thinks fit to ensure that the thing is preserved until it is no longer required for those purposes; or
- (c) where the person who is lawfully entitled to possession of the thing is not known and the Judge is not satisfied that the detention of the thing is required for the purposes of an investigation, or any court proceedings, in respect of the commission of an offence against any law, order that the thing be forfeited to the Government to be disposed as the Attorney-General directs, or make such order disposing of the thing as the Judge thinks fit.

(9) A constable who seizes any document under this section may, subject to subsection (10), make and retain a copy of the document before making the application under subsection (6)(b) or complying with an order that the document be returned, forfeited or otherwise disposed of under subsection (7) or (8).

(10) Where a constable makes a copy of a document under subsection (9), the constable shall make the copy of the document in the presence of, and have the document certified as a true copy, by a member of the Jamaica Constabulary Force, at the rank of Sergeant or above, and that copy shall be admissible in evidence and, in the absence of evidence to the contrary, has the same probative force as the original would have if proved in the ordinary way.

(11) Where any thing seized is detained pursuant to this section, a Judge of a Parish Court may, on application by a person who has an interest in the thing detained, after giving seven clear days' notice to the Director of Public Prosecutions, order that the applicant be

permitted to examine the thing seized, and impose such terms and conditions as appear to the Judge to be necessary or desirable to ensure that the thing is safeguarded and preserved for the purposes for which it is required.

(12) A warrant under this section shall permit a constable executing the warrant to search any person found at the location which is the subject of the warrant.

(13) A warrant under this section, authorizing a constable to carry out a search –

(a) may be executed by the constable, notwithstanding that the warrant is not in the constable's possession at that time; and

(b) shall, on the demand of the person apparently in charge of the premises, receptacle, conveyance or place, specified in the warrant, be shown to that person as soon as practicable.

(14) A constable exercising powers under a warrant issued under this section, may secure from other persons, such

assistance as is reasonably necessary for the purpose of executing the warrant.”.

Amendment of the Criminal Justice (Administration) Act.

14. The Criminal Justice (Administration) Act is amended by inserting next after section 39 the following –

“ *Offences of Tipping-off and Falsifying, Concealing, Destroying, Etc., Documents and Items*

Offence of tipping-off.

39A. – (1) A person commits an offence if, knowing or having reasonable grounds to believe that an investigation is being conducted or about to be conducted in respect of an offence under any law, the person discloses information or any other matter relating to the investigation, to another person.

(2) A person does not commit an offence under subsection (1) if –

- (a) the disclosure is made in carrying out a function that the person has under an Act or in compliance with a requirement imposed under an Act or by a court of law; or
- (b) the disclosure is to or by an attorney-at-law in any circumstances where the disclosure is protected by legal professional privilege, provided that, the disclosure is not made with the intention of furthering a criminal purpose.

(3) A person who commits an offence under this section shall be liable upon conviction before –

- (a) a Parish Court, to a fine not exceeding five million dollars or imprisonment for a term not exceeding five years or to both such fine and imprisonment;
- (b) a Circuit Court, to a fine or imprisonment for a term not exceeding ten years or to both such fine and imprisonment.

Offence of falsifying, concealing, destroying or otherwise disposing of documents or items relevant to an investigation.

39B. – (1) A person commits an offence if, knowing or having reasonable grounds to believe that an investigation is being conducted or about to be conducted in respect of an offence under any law, the person falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of, documents or items that are relevant to the investigation.

(2) A person does not commit an offence under subsection (1) if the person does not know or suspect that the documents or items are relevant to the investigation.

(3) A person who commits an offence under this section shall be liable upon conviction before –

- (a) a Parish Court, to a fine not exceeding five million dollars or imprisonment for a term not exceeding five years or to both such fine and imprisonment;

- (b) a Circuit Court, to a fine or imprisonment for a term not exceeding ten years or to both such fine and imprisonment.”.

Amendment of the Law Reform (Fraudulent Transactions) (Special Provisions) Act. 15. Section 2 of the Law Reform (Fraudulent Transactions) (Special Provisions) Act is amended by deleting from the definition of “criminal organization” the words “serious offences” and substituting therefor the words “applicable offences”.

Amendment of the Offences Against the Person Act. 16. Section 18A(3)(e) of the Offences Against the Person Act is amended by deleting from the definition of “criminal organization” the words “serious offences” and substituting therefor the words “applicable offences”.

Amendment of the Trafficking in Persons (Prevention, Suppression and Punishment) Act. 17. Section 4A(4) of the Trafficking in Persons (Prevention, Suppression and Punishment) Act is amended by deleting from the definition of “criminal organization” the words “serious offences” and substituting therefor the words “applicable offences”.

MEMORANDUM OF OBJECTS AND REASONS

The Criminal Justice (Suppression of Criminal Organizations) Act (“the Act”) for the disruption and suppression of criminal organizations, came into operation on the 4th day of April, 2014. Section 21 of the Act imposed a requirement on a Joint Select Committee of the Houses of Parliament to review the provisions of the Act, no later than three years after its commencement.

A Joint Select Committee of Parliament commenced its deliberations on October 24, 2018 and after consultation with stakeholders and an analysis of the issues surrounding the use of the Act, its Report was tabled in and approved by the House of Representatives on May 27,

2020 and adopted in the Senate on June 4, 2020.

The proposed amendments to the Act are aimed, generally, at improving the impact of the legislation and the prosecution of cases under the legislation, enhancing the efficiency with which cases are prosecuted and protecting witnesses and their family members.

In order to achieve the forgoing general objectives, the Act is being amended –

- (a) to change the term “serious offence” to “applicable offence”, recognizing that criminal organizations are engaged in a wide range of offences (many of which are used to fund their activities) which may not readily be considered to be “serious offences”;
- (b) to include in the Act, the offence of using premises or a conveyance for a purpose which constitutes an offence under the Act;
- (c) to expand the list of aggravating factors to be considered when sentencing an individual convicted of certain offences under the Act; and
- (d) to improve the trial procedure in order to protect the identity of witnesses.

The Bill also seeks to make consequential amendments to other relevant pieces of legislation, namely –

- (a) the Criminal Justice (Administration) Act, to make it an offence –
 - (i) to disclose any information in relation to an investigation being conducted in respect of an offence under any piece of legislation; and

- (ii) to falsify, conceal, destroy or otherwise dispose of documents or items relevant to an investigation;
- (b) the Constabulary Force Act, to provide for general search and seizure powers; and
- (c) the Law Reform (Fraudulent Transactions) (Special Provisions) Act, the Offences Against the Person Act and the Trafficking in Persons (Prevention, Suppression and Punishment) Act to amend therein, the definition of “criminal organizations”, to delete the term “serious offences” and substitute therefor the words “applicable offences”.

Horace Chang
Minister of National Security