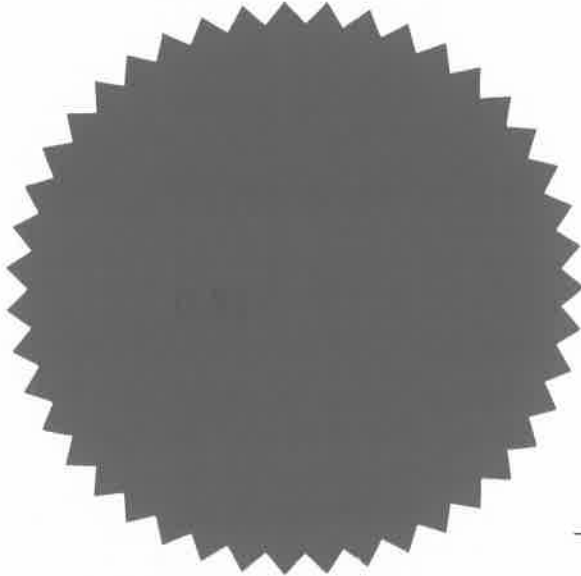


JAMAICA

No. 16 – 2015



I assent,

*R. Allen*

*Governor-General.*

*10<sup>th</sup> day of August 2015*

AN ACT to Amend the Evidence Act.

[ *11<sup>th</sup> day of August, 2015* ]

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:—

1. This Act may be cited as the Evidence (Amendment) Act, 2015, and shall be read and construed as one with the Evidence Act (hereinafter referred to as the "principal Act") and all amendments thereto. Short title and construction.

Renumbering of Part I and Part IA of principal Act as Parts IA and IB respectively and insertion of new Parts I and IB.

2. The principal Act is amended by—

- (a) renumbering Part I as Part IA, and accordingly deleting the heading “Part I. *Competency of Witnesses*” and substituting therefor the heading “Part IA. *Competency of Witnesses*”;
- (b) renumbering Part IA as Part IB, and accordingly deleting the heading “Part IA. *Hearsay and Computer-generated Evidence*” and substituting therefor the heading “Part IB. *Hearsay Evidence*”;
- (c) inserting immediately before Part IA as renumbered, the following new Part as Part I—

“ PART I. *Preliminary Provisions*

Interpre-  
tation. 1A. In this Act—

“civil proceedings” means any legal proceedings other than criminal proceedings and includes an inquest conducted by a Coroner under the *Coroners Act*;

“criminal proceedings” means criminal proceedings before—

- (a) the Gun Court, a Circuit Court or the Court of Appeal;
- (b) a Resident Magistrate on indictment or in the exercise of a special statutory summary jurisdiction;
- (c) a Family Court or a Children’s Court;
- (d) any other court designated by the

Minister by order, for the purposes of this Act or any other Act;

“document” means, in addition to a document in writing, anything in which information of any description is recorded;

“party” means—

- (a) in the case of civil proceedings, the claimant or the respondent;
- (b) in the case of criminal proceedings, the prosecution or the accused;

“special measure” means the giving of evidence by a witness in civil or criminal proceedings, by way of live link or video recording in the manner and circumstances provided for pursuant to the provisions of the *Evidence (Special Measures) Act, 2012*.”.

3. Part IB, as renumbered, of the principal Act is amended—

- (a) by repealing section 31B;
- (b) by deleting subsection (3) of 31C;
- (c) by inserting immediately after section 31C the following new sections—

“ Admission by agreement.

31CA.—(1) Notwithstanding the provisions of sections 31CB, 31G or any other law, in any civil or criminal

Amendment  
Part IB, as  
renumbered  
principal Act

proceedings, the court may, with the written or oral agreement of each party—

- (a) admit into evidence any document, without the maker of the document being called to give evidence as a witness in relation thereto; and
- (b) treat any fact as having been proved, without evidence being led to prove such fact.

(2) The provisions of subsection (1) shall apply in relation to an inquest conducted by a Coroner under the *Coroners Act* as if references to “party” were a reference to “interested party” within the meaning of that Act.

(3) For the purposes of this section, “court” includes a Coroner conducting an inquest in accordance with the provisions of the *Coroners Act*.

Admissibility  
of expert  
reports.

31CB.—(1) Subject to the provisions of subsection (2), any report signed by an expert shall, in any criminal proceedings, be admitted as evidence of the matters stated therein, without the expert being called upon to attend and to give evidence on oath.

(2) Where, in any criminal proceedings, a party intends to put into evidence a report as provided in subsection (1), that party shall, not later than thirty days before commencement of the trial, serve upon the other party, (or in the case of an accused, his attorney-at-law) written notice of such intention, together with a copy of

the report, and the other party may, not later than five days before the commencement of the trial, by written notice served on the first-mentioned party, object to the admission of the report, and may require the attendance of the expert to give evidence on oath.

(3) The period of thirty days referred to in subsection (2) shall not be computed to include Saturdays, Sundays or public general holidays or the day on which the notice is served.

(4) The court may, on an application made by either party to the criminal proceedings, or on its own motion, require the expert who has signed a report to attend and give evidence at any stage in the proceedings, where the court considers this to be necessary in the interests of justice.

(5) In this section “expert report” means a written report or a certificate by a person dealing wholly or mainly with matters on which he is (or would, if living be) qualified to give expert evidence; and any document purporting to be an expert report shall be deemed to be such a report unless the contrary is proved.

(6) Any report submitted by an expert at a Coroner’s inquest shall be admitted as evidence of the matters stated therein, without the expert being called upon to attend and give evidence on oath, provided that—

- (a) no interested party objects to the report being admitted; and

- (b) the Coroner is satisfied that it is not necessary that the expert attend and give evidence”;
- (d) in section 31D by deleting the phrase “Subject to section 31G, a statement” where it appears and substituting therefor, the words “A statement”;
- (e) in section 31E—
  - (i) by deleting the words “Subject to section 31G, in any” where it appears in subsection (1) and substituting therefor the words, “In any”; and
  - (ii) in subsection (6) by inserting immediately after the word “with” the words “or modify in relation to any party to the proceedings,”;
- (f) in section 31F by deleting the phrase “Subject to section 31G, a statement” and substituting therefor the words “A statement”;
- (g) by repealing section 31G and substituting therefor the following—

“ Third  
Schedule.

31G.—(1) Subject to the provisions of this section, in any proceedings, a statement in a document or other information produced by a computer shall not be admissible as evidence of any fact stated or comprised therein unless it is shown that—

- (a) there are no reasonable grounds for believing that the statement is inaccurate because of improper use of the computer; and
- (b) at all material times the computer was operating properly, or if not, that any

respect in which it was not operating properly or was out of operation was not such as to affect the production of the document or the accuracy of its contents.

(2) Subject to subsection (3), in any proceedings where it is desired to have a statement or other information admitted in evidence in accordance with subsection (1) above, a certificate—

- (a) dealing with any of the matters mentioned in subsection (1); and
- (b) purporting to be signed by a person occupying a responsible position in relation to the operation of the computer,

shall give rise to a presumption, in the absence of evidence to the contrary, that the matters stated in the certificate are accurate, and for the purposes of this paragraph it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(3) Where a party intends to rely on a certificate referred to in subsection (2), that party shall, at least thirty days before commencement of the trial, serve on the other party (or, in the case of an accused, his attorney-at-law) written notice of such intention, together with a copy of the certificate.

(4) Any person who in a certificate tendered which he knows to be false or does not believe to be true commits an offence and shall be liable—

(a) on conviction, on indictment in the Circuit Court to a fine or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment; or

(b) on summary conviction in a Resident Magistrate's Court to a fine not exceeding one million dollars or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment;

(5) Where the circumstances of the case are such that, on the application of either party, the court considers that the prejudicial effect of enabling a party to benefit from the presumption under subsection (2) in relation to the matters stated in a certificate would outweigh the probative value of the certificate, the court may require the party who is seeking to rely on the statement in a document or other information produced by the computer, to prove the matters referred to in paragraphs (a) and (b) of subsection (1) by adducing evidence thereof.



(6) Nothing in subsection (1) shall affect the admissibility of an admission or a confession by an accused.

(7) In this section, “computer” means any device or group of interconnected or related devices, one or more of which, pursuant to a program, performs automatic processing of data, and includes any data storage facility or electronic communications system directly connected to or operating in conjunction with such device or group of such interconnected or related devices.”;

(h) by deleting section 31H; and

(i) in section 31J(1) by deleting the phrase “31E, 31F or 31G” and substituting therefor the phrase “31E or 31F”.

4. The principal Act is amended by inserting next after Part 1B as renumbered, the following new part as Part IC—

Insertion of  
new Part IC in  
principal Act.

“ PART IC. *Evidence of Child Witnesses  
Competence and Corroboration*

Interpretation. 31M. For the purposes of this Part—

“child” means a person who is under the age of fourteen years;

“court” includes a Coroner conducting an inquest in accordance with the provisions of the *Coroners Act*.

Competence of  
child witness  
to give  
evidence.

31N.—(1) Subject to subsection (2) and the other provisions of this Act, at every stage in civil or criminal proceedings, a child is competent to give evidence.

(2) A child is competent to give evidence, if and only if it appears to the court that the child is a person who—

- (a) is possessed of sufficient intelligence to justify the reception of the evidence; and
- (b) understands the duty of speaking the truth.

Determination  
of  
competence.

31O.—(1) Any question as to whether a child is competent to give evidence in civil or criminal proceedings for the purposes of section 31N, shall be determined by the court in accordance with this section, whether raised—

- (a) by a party to the civil or criminal proceedings; or
- (b) by the court of its own motion,

and shall be determined by the court on a balance of probabilities in accordance with this section.

(2) In determining the question mentioned in subsection (1), the court shall treat the child as having the benefit of any special measure for which the court has made or proposes to make an order.

(3) Any proceedings for determining any matter for the purposes of this section, shall take place in the absence of any jury.

(4) Where the court considers it necessary to question the child in making its determination under subsection (1) the questioning shall—

- (a) subject to subsection (5), be conducted by the court in the presence of the parties to the proceedings and—
  - (i) any social worker accompanying the child; or

- (ii) any other person appointed by the court for this purpose; and
- (b) be conducted with the benefit of any special measure which the court deems necessary.

(5) For the purposes of subsection (4) in the case of an inquest conducted by a Coroner under the *Coroners Act* the questioning shall be conducted by the Coroner in the presence of such persons as the Coroner may determine.

(6) Where the court considers it necessary in order to make a determination under subsection (1), the court may review evidence from a child psychiatrist, child psychologist, probation officer, or any other person who the court considers to be qualified to make an assessment of the child and who is not a party to the proceedings.

Evidence of child to be given without administering oath.

31P.—(1) Where pursuant to the provisions of section 31N, a child is competent to give evidence, the evidence of the child shall be given without administering an oath.

(2) Evidence given by a child in accordance with subsection (1) shall be treated, for the purposes of civil or criminal proceedings, as if that evidence had been given on oath.

(3) Subject to section 63 of the *Child Care and Protection Act*, a child who wilfully gives false evidence in any civil or criminal proceedings commits an offence and shall be dealt with in accordance with the provisions of section 76 of the *Child Care and Protection Act*.

(4) Where a child who is competent to give evidence in civil or criminal proceedings in accordance with section 31N, gives evidence pursuant to this section, no conviction, verdict or finding in those proceedings shall be taken to be unsafe by reason only that the evidence of the child was given without administering an oath.

Corroboration  
warning.

31Q.—(1) Subject to subsection (2), it shall not be necessary for the evidence given by a child in civil or criminal proceedings to be corroborated for a determination of liability, a conviction or any other issue, as the case may be, in such proceedings.

(2) Notwithstanding the provisions of subsection (1), the trial judge (whether a judge of the Supreme Court or a Resident Magistrate) may—

- (a) in a trial by jury, where the trial judge considers that the circumstances of the case so require, give a warning to the jury to exercise caution in determining whether to accept uncorroborated evidence of the child and the weight to be given to such evidence; or
- (b) in a trial by judge alone, where the trial judge considers that the circumstances of the case so require, give himself the warning as provided under paragraph (a).

(3) The provisions of this section shall apply in relation to an inquest conducted by a Coroner under the Act as if the reference to—

- (a) “trial judge” were a reference to “Coroner”; and
- (b) “trial by jury” were a reference to an inquest conducted by a Coroner under the *Coroners Act*.”.

- |   |   |
|---|---|
| <b>5. Section 50 of the principal Act is repealed.</b>  | Repeal of section 50 of principal Act.                  |
| <b>6. Section 51 of the principal Act is repealed.</b>  | Repeal of section 51 of principal Act.                  |
| <b>7. The provisions of the enactments specified in the first column of the Schedule are amended in the manner specified respectively in relation to them in the second column of the Schedule.</b> | Consequential amendments of other enactments. Schedule. |

## SCHEDULE

(Section 7)

*Amendment of other Acts*EnactmentsAmendments*Child Care and  
Protection Act*

## Section 20

*Coroners Act*

## Section 3

Delete the section.

Insert next after the definition of “the  
Coroner” the following—

“document” means, in addition to  
a document in writing  
anything in which inform-  
ation of any description is  
recorded;

“interested party” means—

- (a) a parent, child or spouse of a deceased person or, if there are no such persons, the deceased’s next-of-kin;
- (b) a personal representative of the deceased;
- (c) any beneficiary under a policy of insurance issued on the life of the deceased;
- (d) the insurer who issued such a policy of insurance;
- (e) any person whose act or omission, or that of the person’s agent or employee acting

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in the course of duty, may in the opinion of the Coroner have caused or contributed to the death of the deceased;

- (f) any person appointed by a trade union to which the deceased belonged at the time of his death, if the death may have been caused by—
  - (i) an injury received by the deceased in the course of the deceased's employment; or
  - (ii) a disease to which he is exposed specifically by the nature of his duty;
- (g) any person appointed by a government department to attend the inquest;

## Enactments

## Amendments

Section 19	Delete subsection (4).
Section 21	Delete subsection (3).
Section 23A	Delete subsection (3).
Section 23B	Delete subsection (1).
Section 23D	Delete the section.

*Criminal  
Justice  
(Administration)  
Act.*

1. Insert next after section 5 the following new section as section 5A—

“Designation of attorney-at-law of record to appear on behalf of the accused at certain proceedings.

Form AA  
First Schedule.

5A.—(1) Subject to the provisions of this section, an accused who is in custody may appoint an attorney-at-law to appear on behalf of the accused, without the accused being present at any part of any criminal proceedings, as provided for under subsection (3), by filing a duly completed designation with the court in the form set out as Form AA in the First Schedule.

(2) Subject to subsection (3), where a designation under subsection (1) is filed—

(a) the designated attorney-at-law may appear on behalf of the accused, without the accused being present, for any part of the criminal proceedings, other than where—

(i) a plea of guilty is made;

(h) the Commissioner of Police; or

(i) any other person who, in the opinion of the Coroner, is a properly interested person;”.



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- (ii) jurors are being selected;
- (iii) evidence of a witness is taken;
- (iv) a summation is being made and a verdict is being delivered; or
- (v) a sentence is pronounced; and

(b) an appearance by the designated attorney-at-law as provided for in paragraph (a) shall be equivalent to the accused being present.

(3) The court may order the accused to be present otherwise than by appearance by the designated attorney-at-law.

(4) A designation under subsection (1) shall remain in effect for as long as the accused remains in custody, or until the designation is revoked by the accused by filing a notice of revocation with the court in the form set out as Form AB in the First Schedule, or until the attorney-at-law appointed under subsection (1) withdraws his acceptance of the designation by filing a notice of withdrawal of acceptance with the court in the form set out as Form AC in the First Schedule and causing a copy thereof to be delivered to the accused.

Form AB.  
First Schedule.

Form AC.  
First Schedule.

(5) Where a designation has been filed under subsection (1), a purported subsequent designation shall not be effective unless the former designation has been revoked in accordance with

**Enactments**  

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**Amendments**  

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subsection (4) or the attorney-at-law designated by the former designation has withdrawn his acceptance of the designation in accordance with subsection (4).

(6) For the purposes of this section, "criminal proceedings" has the meaning assigned to it under the *Evidence Act*."

2. In the First Schedule by inserting next after Form A, the following new Forms as Form AA, Form AB and Form AC—

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“ FORM AA (Section 5A(1))

THE CRIMINAL JUSTICE (ADMINISTRATION) ACT

Designation of Attorney-at-Law of Record  
(under section 5A of the Act)

JAMAICA

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA  
CRIMINAL DIVISION/HOME CIRCUIT DIVISION  
OR

IN THE RESIDENT MAGISTRATE’S COURT FOR THE PARISH  
OF

INFORMATION/REFERENCE NO.:

R v \_\_\_\_\_

Offences Charge \_\_\_\_\_

Set out the offences charged and dates of the alleged offences  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I \_\_\_\_\_ of \_\_\_\_\_ designate:—  
Name of Accused Address of Accused

\_\_\_\_\_  
Name of Attorney-at-Law

\_\_\_\_\_  
Address of Attorney-at-Law

\_\_\_\_\_  
Phone Number of Attorney-at-Law

\_\_\_\_\_  
Fax Number of Attorney-at-Law

\_\_\_\_\_  
Email Address of Attorney-at-Law

to appear on my behalf, without me being present, at any part of the proceedings other than where:—

- (a) a plea of guilty is made;
- (b) jurors are being selected;

Enactments  
\_\_\_\_\_

Amendments  
\_\_\_\_\_

- (c) evidence of a witness is taken;
- (d) the summation is being made and a verdict is being delivered; or
- (e) a sentence is pronounced.

*(Notwithstanding this designation, I understand that the court may make an order requiring that I appear in person or such other orders as the court deems fit.)*

\_\_\_\_\_  
*Date*

\_\_\_\_\_  
*Signature of Accused*

I \_\_\_\_\_ hereby accept  
this designation.

\_\_\_\_\_  
*Date*

\_\_\_\_\_  
*Signature of Designated  
Attorney-at-Law*

Enactments

Amendments

FORMAB (Section 5A(4))

THE CRIMINAL JUSTICE (ADMINISTRATION) ACT

*Notice of Revocation of Designated Attorney-at-Law  
under section 5A of the Act*

Jamaica

I \_\_\_\_\_ hereby revoke the  
*name of Accused*  
designation of \_\_\_\_\_ as  
*name of Attorney-at-Law*  
my Attorney-at-Law of Record in the matter of  
\_\_\_\_\_ relating to the charge(s) or  
*Information No./Reference No.*  
the offence(s) of \_\_\_\_\_ as of \_\_\_\_\_  
*Day/Month/Year*

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_

\_\_\_\_\_  
*Signature of Accused*

Enactments  
\_\_\_\_\_Amendments  
\_\_\_\_\_

FORM AC

(Section 5A(4))

## THE CRIMINAL JUSTICE (ADMINISTRATION) ACT

*Notice of Withdrawal of Acceptance as**Designated Attorney-at-Law under section 5A of the Act*

Jamaica

I \_\_\_\_\_ hereby withdraw  
*Name of Attorney-at-Law*my acceptance as designated Attorney-at-Law of Record  
appearing on behalf of \_\_\_\_\_ in the  
*Name of Accused*matter of \_\_\_\_\_ relating to  
*Information No./Reference No.*

the charge(s) of the offence(s) of \_\_\_\_\_

as of \_\_\_\_\_  
*Day/Month/Year*

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 20

\_\_\_\_\_  
*Signature of Attorney-at-Law*

Passed in the Senate this 8th day of May 2015 with ten (10) amendments.

FLOYD E. MORRIS

*President.*

Passed in the House of Representatives this 21st day of July 2015.

MICHAEL A. PEART  
*Speaker.*

*This printed impression has been carefully compared by me with the authenticated impression of the foregoing Act, and has been found by me to be a true and correct printed copy of the said Act.*

*(sgd.) Heather E. Cooke*  
*Clerk to the Houses of Parliament.*

