

TASMANIA

**CRIMINAL CODE AMENDMENT (JUDGE ALONE
TRIALS) BILL 2021**

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CRIMINAL CODE AMENDMENT (JUDGE ALONE TRIALS) BILL 2021

This Public Bill originated in the House of Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

SHANE DONNELLY, *Clerk of the House*
24 November 2021

(Brought in by the Minister for Justice, the Honourable Elise Nicole Archer)

A BILL FOR

An Act to amend the *Criminal Code Act 1924*

Be it enacted by Her Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

1. Short title

This Act may be cited as the *Criminal Code Amendment (Judge Alone Trials) Act 2021*.

2. Commencement

This Act commences on a day to be proclaimed.

3. Principal Act

In this Act, the *Criminal Code Act 1924** is referred to as the Principal Act.

*No. 69 of 1924

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4. Schedule 1 amended (*Criminal Code*)

Schedule 1 to the Principal Act is amended as follows:

- (a) by inserting the following sections after section 361:

361AA. Trial by judge alone

- (1) Despite section 361, a party to proceedings in respect of a crime may apply to the court for an order to have the trial in respect of the crime be determined by a single judge in place of a trial by jury.
- (2) An application for an order under subsection (1) in respect of a crime –
 - (a) may only be made within the 3-month period immediately after the accused person, in respect of the crime, has been committed to trial for the crime; and
 - (b) may only be made by the prosecutor for the crime if –
 - (i) the accused person, in respect of the crime, has

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given informed
consent to the
proposed order; or

(ii) as part of the
application, the
prosecutor
requests that the
court make the
proposed order
without the
consent of the
accused person, in
respect of the
crime, in
accordance with
subsection (8);
and

(c) may not be made in
respect of an offence
against a law of the
Commonwealth.

(3) Despite subsection (2)(a), the
court may consider an application
made outside of the period
specified in that paragraph if the
court is satisfied that the
applicant has provided a
reasonable explanation for the
delay in the making of the
application.

(4) In determining whether to make
an order under subsection (1), the

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court may inform itself in any manner it thinks appropriate.

(5) The court must not make an order under subsection (1) in respect of a crime unless the court is satisfied that –

(a) the accused person, in respect of the crime, has given informed consent in accordance with subsection (6) to the proposed order; and

(b) it is in the interests of justice for the order to be made; and

(c) if the accused person has been charged with more than one offence in addition to the crime and the offences are to be tried together, the order is to relate to all of the charges that are to be tried together; and

(d) if there is more than one accused person to be tried together for the crime –

(i) an application has been made, under this section in respect of the

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crime, in relation to each accused person to be tried together for the crime; and

- (ii) each such accused person has given informed consent to the proposed order that is relevant to the accused person.

(6) For the purposes of subsection (5)(a), the court may only be satisfied that an accused person has given informed consent under this section to a proposed order if the court is satisfied of each of the following in respect of the accused person:

- (a) the accused person understands the nature of the proposed order and the effect of an order under this section, if made;

(b) the accused person –

- (i) has been provided with legal advice on the effect of the

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proposed order, if
made; or

(ii) has been offered,
or advised to
obtain, such legal
advice and has
refused the offered
legal advice or to
obtain the legal
advice;

(c) if the accused person has
been provided with legal
advice in accordance with
paragraph (b)(i), the legal
practitioner who provided
the legal advice to the
accused person has
certified in writing –

(i) that the legal
advice was
provided; and

(ii) whether the legal
practitioner
believes that the
accused person
has freely given
the informed
consent.

(7) In determining whether it is in the
interests of justice for an order to
be made under this section as

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required under subsection (5)(b),
the court –

(a) is to take into account
whether the crime to
which the order relates
involves an element or a
question of fact that –

(i) is more
appropriate to be
determined by a
jury to ensure that
community
standards and
opinions are
reflected in its
determination; and

(ii) includes, but is not
limited to, an
element relating
to, or a question
of, reasonableness,
dangerousness
indecentcy,
negligence or
obscenity; and

(b) may take into account any
other matter or
circumstance that the
court considers relevant.

(8) The court does not have to be
satisfied of the matters in

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subsection (5)(a) and (d) in respect of an accused person if the court is satisfied that there is a significant risk that an offence under section 63 of the *Juries Act 2003* may occur if the accused person is tried by jury.

- (9) Unless otherwise specified and as necessary in the context, if an order is granted under this section in respect of a crime, a reference in this Act or any other Act to a trial by jury is taken to include a reference to a trial by a single judge undertaken in accordance with the order so made.
- (10) If an application is made under this section in respect of a crime and is later withdrawn before the application is determined, the applicant may not make another application under this section in respect of the crime except where the court is satisfied that exceptional circumstances exist.
- (11) An order made under subsection (1) may only be revoked if the court –
 - (a) is satisfied that the information on which the order was made was false

or misleading in a material particular; or

- (b) otherwise considers that there are reasonable grounds to revoke it.

361AB. Appeal to Court of Criminal Appeal in respect of application for trial by judge alone

- (1) A party to proceedings in respect of a crime may appeal, to the Court of Criminal Appeal, against one of the following decisions of the court:
 - (a) a decision of the court to make an order under section 361AA in respect of the crime;
 - (b) a decision of the court to refuse to make an order under section 361AA in respect of the crime.
- (2) An accused person, in respect of a crime, may only appeal a decision of a court to make an order under section 361AA in respect of the crime if the order was made without the informed consent, within the meaning of that section, of the accused person.

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- (3) An appeal under this section is to be by way of a new hearing.
- (b) by inserting the following subsection after subsection (5) in section 383:
 - (6) If an indictment is tried by a single judge in accordance with an order under section 361AA –
 - (a) the judge may return any verdict or make any finding under this section that a jury may have made if the indictment had been tried by a jury; and
 - (b) before returning a verdict or making a finding under this section, the judge is to –
 - (i) take into account any warning that would have been given to a jury before returning the verdict or making the finding; and
 - (ii) as far as is practicable, use the same principles of law and procedure as would be used by

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a jury in returning
the verdict or
making the
finding; and

- (c) if the judge returns a verdict or makes a finding under this section, the judge is to record in the judgement for the trial the principles of law applied, and the findings of fact relied on, by the judge when returning the verdict or making the finding.
- (c) by inserting the following paragraph after paragraph (ba) in section 401(2):
 - (bb) in respect of an indictment tried by a single judge in accordance with an order under section 361AA –
 - (i) against a decision of a question of law or a question of fact; or
 - (ii) against a verdict, on the ground that it is unreasonable or cannot be supported having regard to the evidence; or
- (d) by inserting the following section after section 464:

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464A. Application of *Criminal Code Amendment (Judge Alone Trials) Act 2021*

For the avoidance of doubt, the amendments to this Act made by the *Criminal Code Amendment (Judge Alone Trials) Act 2021* apply in relation to an offence committed before the day on which that Act commences if a jury has not been empanelled in respect of a trial by jury for the offence.

5. Repeal of Act

This Act is repealed on the first anniversary of the day on which it commenced.