ANGUILLA

REVISED STATUTES OF ANGUILLA

CHAPTER C150

CRIMINAL PROCEDURE ACT

Showing the Law as at 31 December 2022

This Edition was prepared under the authority of the Revised Statutes and Regulations Act, R.S.A. c. R55 by the Attorney General as Law Revision Commissioner.

This Edition consolidates—

Act 16/2022, in force 22 December 2022

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Attorney General's Chambers
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CRIMINAL PROCEDURE ACT

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CRIMINAL PROCEDURE ACT

PART 1

PRELIMINARY MATTERS

Interpretation

1. In the interpretation of this or any other Act relating to criminal law, unless there is something in the enactment, or in the context, indicating a different meaning, or calling for a different construction—

(a) the following definitions apply—

"Court" means the High Court or any Judge thereof;

"indictment" includes information and inquisition as well as indictment, and any plea, replication, or other pleadings, and any record;

"oath" includes affirmation in the case of a person allowed to affirm instead of swear, and "swear" in that case includes affirm;

"property" includes goods, chattels, money, valuable securities, and every other matter or thing, whether real or personal, upon or with respect to which any offence may be committed;

"Registrar" means the Registrar of the High Court;

(b) whenever in any Act relating to any offence, whether punishable on indictment or summary conviction, any word has been used or employed in describing or referring to the offence, or to the subject matter on or with respect to which it may be committed, or to the offender, or the party affected, or intended to be affected, by the offence, such Act shall be understood to include several matters of the same kind as well as one matter, and, when a forfeiture or penalty is made payable to a party aggrieved, it shall be payable to a body corporate in case such a body is the party aggrieved;

(c) whenever a person doing a certain act is declared to be guilty of any offence and to be liable to punishment therefor, it shall be understood that such person shall only be deemed guilty of such offence and liable to such punishment after being duly convicted of such act, and whenever it is provided that the offender shall be liable to different degrees or kinds of punishment, it shall be understood that the punishment to be inflicted will be subject to the limitations contained in the enactment, in the discretion of the Court or tribunal before which such conviction takes place.

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PART 2

APPREHENSION OF OFFENDERS

Apprehension without warrant

2. Any person found committing an offence punishable either upon indictment or upon summary conviction may be immediately apprehended by any police officer without a warrant, or by the owner of the property on or with respect to which the offence is being committed, or by his servant or by any other person authorised by such owner, and shall be forthwith taken before the Magistrate to be dealt with according to law.

Persons offering goods suspected to be stolen may be apprehended

3. If any person to whom any property is offered to be sold, pawned or delivered has reasonable cause to suspect that any such offence has been committed with respect to such property, he may, and, if in his power, he shall, apprehend and forthwith carry before the Magistrate the party offering the property, together with the property, to be dealt with according to law.

Apprehension by private persons of night offenders

4. Any person may apprehend any other person found committing any indictable offence in the night, and shall convey or deliver him to some police officer or other person in order that he may be taken, as soon as he conveniently may be, before the Magistrate to be dealt with according to law.

Proceedings before Magistrate

5. The proceedings to be had before the Magistrate, when any offender is brought before him, shall, subject to any special provision contained in any Act relating to the particular offence with which the offender is charged, be regulated by the provisions of the Magistrate's Code of Procedure Act relating to the summary jurisdiction (criminal) of the Magistrate.

PART 3

PROCEEDINGS PRELIMINARY TO TRIAL

When accused committed for trial, copy of depositions to be supplied to Attorney General

6. When a person is committed for trial under the provisions of the Magistrate's Code of Procedure Act, the Registrar shall, as soon as practicable after the written information (if any), the depositions and the statement of the accused have been delivered to him in accordance with the provisions of that Act, cause a copy of the documents to be made and delivered to the Attorney General.

Power of Attorney General to remit case for further inquiry

7. At any time after the receipt of the copy of the documents mentioned in section 6 and before the sitting of the Court to which the accused person has been committed for trial, the Attorney General may, if he thinks fit, remit the case to the Magistrate with directions to re-open the inquiry

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for the purpose of taking evidence or further evidence on a certain point or points to be specified, and with any other directions he thinks proper.

Power of Attorney General to remit case to be dealt with summarily

8. If, after the receipt of the copy of the documents mentioned in section 6, the Attorney General is of opinion that the accused person should not have been committed for trial but that the matter should have been dealt with summarily, the Attorney General may, if he thinks fit, at any time after that receipt, remit the case to the Magistrate with directions to deal with it accordingly, and with any other directions he thinks proper.

Power of Attorney General to remit case for committal

9. (1) In any case where the Magistrate discharges an accused person, the Attorney General may require the Magistrate to send to him the depositions taken in the case, or a copy thereof, and any other documents or things connected with the case which he thinks fit.

(2) If, after the receipt of those documents and things, the Attorney General is of the opinion that the accused person should have been committed for trial, the Attorney General may, if he thinks fit, remit them to the Magistrate, with directions to deal with the matter accordingly, and with any other directions he thinks proper.

Further provision as to remission of case

10. (1) Any directions given by the Attorney General under section 7, 8 or 9 shall be in writing and shall be complied with by the Magistrate but the Attorney General may at any time add to, alter or revoke any such directions.

(2) Whenever the Attorney General gives any directions under section 7, 8 or 9, the following provisions (where necessary or applicable) shall have effect, that is to say—

(a) the Registrar at the request in writing of the Attorney General shall send back to the Magistrate the original documents transmitted to him by the Magistrate;

(b) where the accused person is in custody, the Magistrate may, by an order in writing under his hand, direct the Superintendent of Prisons to convey him or cause him to be conveyed to the place where the proceedings are to be held for the purpose of being dealt with as the Magistrate directs;

(c) where the accused person is on bail or is at liberty, the Magistrate shall issue a summons for his attendance at the time and place when and where the proceedings are to be held; and

(d) thereafter the proceedings shall be continued under the provisions of the Magistrate's Code of Procedure Act as if the accused person had not been committed for trial or had not been discharged, as the case may be, and, in the case of any directions given under section 8, in the same manner as if the Magistrate had himself formed an opinion in terms of section 52 of the Magistrate's Code of Procedure Act.

Right of Attorney General to enter *nolle prosequi*

11. (1) At any time after the receipt of the copy of the documents mentioned in section 6, and either before or at the trial and at any time before verdict, the Attorney General may enter *nolle*

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prosequi either by stating in Court or by informing the Court in writing addressed to the Registrar that the Crown intends that the proceedings shall not continue, and thereupon the accused person shall be at once discharged in respect of the charge for which *nolle prosequi* is entered and, if he has been committed to prison, shall be released or, if he is on bail, his recognizance shall be discharged, but his discharge shall not operate as a bar to any subsequent proceedings against him on the same facts.

(2) If the accused person is not before the Court when *nolle prosequi* is entered, the Registrar shall cause notice in writing of the entry to be given to the Superintendent of Prisons, if the accused is detained, and to the Magistrate, and the Magistrate shall forthwith cause a similar notice in writing to be given to any witnesses bound over to give evidence at the trial and to the accused and his sureties if he has been admitted to bail.

Institution of proceedings

12. On receipt of the copy of the documents relating to the preliminary inquiry, the Attorney General, if he sees fit to do so, shall institute such criminal proceedings in the Court against the accused person as to him seem proper.

PART 4

INDICTMENTS, ETC.

Mode of trial

13. Every person committed for trial shall be tried on an indictment filed by the Attorney General, but nothing in this section shall affect the right of the Attorney General to file a criminal information.

Filing and service of copy of indictment

14. (1) Subject to the provisions hereafter in this section contained, every indictment shall be filed in the Registry of the High Court at least 5 days before the day of trial of the accused person charged in the indictment.

(2) The Registrar shall, at least 4 days before the day of trial, deliver or cause to be delivered to the Superintendent of Prisons if the accused person has been committed to await his trial, or if he would in due course have been so committed if he had not been admitted to bail, a certified copy of the indictment, and the copy shall be given by the Superintendent of Prisons to the accused person forthwith, if he is in custody, or when he applies for it, if he is on bail.

(3) Whenever the Superintendent of Prisons delivers a copy of the indictment to an accused person he shall notify the Registrar of the fact and any such notification purporting to be signed by the Superintendent of Prisons shall be *prima facie* proof of the fact that the copy was delivered to the accused person, and at the time and on the date, mentioned therein.

(4) Whenever the Court orders or allows another indictment to be preferred at the same sitting of the Court for the same offence or for a minor offence, the accused person shall not be entitled to have a copy served upon him for a longer period than 24 hours before his arraignment on the other indictment.

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(5) Notwithstanding the provisions of this section, an indictment may be filed at any time before the first day of the sitting of the Court, but, in such event, the accused person shall be entitled to apply to the Court for a postponement of the trial to another sitting of the Court on the ground that he has not had sufficient time to prepare his defence.

Bringing of prisoners before the Court for trial

15. (1) The Superintendent of Prisons shall, by himself or by his deputy, be in attendance at all times whilst the Court is sitting, and shall bring each prisoner awaiting trial before the Court when his case is called for trial, and during the continuance of the trial shall have him under his charge and custody, and from time to time remand him to prison by permission or order of the Court during the progress of the trial or on any adjournment thereof.

(2) The Commissioner of Police shall afford any assistance necessary to enable the Superintendent of Prisons to comply with the requirements of this section.

Crown prosecutors

16. (1) The Governor may appoint any barrister-at-law to prosecute on behalf of the Crown at any sitting of the Court or on any day or days of the sitting.

(2) It shall not be necessary for any person so appointed to produce any commission or other proof of his having been so appointed.

(3) Any person so appointed shall, in relation to the business before the Court during the subsistence of his appointment, have all the powers and perform all the duties of the Attorney General but subject to any express directions of the Attorney General in that behalf.

PART 5

DILATORY PLEAS, ARRAIGNMENT, ETC.

Further time to plead

17. No person prosecuted shall be entitled, as of right, to traverse, or postpone, the trial of any indictment presented against him in any Court, or to have time allowed him to plead, or demur, to any such indictment, but, if the Court before whom any person is so indicted, upon the application of such person or otherwise, is of the opinion that he ought to be allowed a further time to plead or demur, or to prepare for his defence or otherwise, such Court may grant such further time to plead or demur, or may adjourn the receiving or taking of the plea or demurrer, and the trial (as the case may be) of such person, to some future time of the sitting of the Court or to the next or any subsequent sitting of the Court, and upon such terms as to bail or otherwise, as to the Court seems meet, and may, in the case of adjournment to another session or sitting, respite the recognizances of the prosecutor and witnesses accordingly, in which case the prosecutor and witnesses shall be bound to attend to prosecute and give evidence at such subsequent session or sitting without entering into any fresh recognizances for that purpose.

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Plea of not guilty puts defendant on trial

18. If any person, being arraigned upon any indictment for any indictable offence, pleads thereto "not guilty", he shall, by such plea, without any further form, be deemed to have put himself upon the country for trial, and the Court may, in the usual manner, order a jury for the trial of such person accordingly.

Persons standing mute

19. If any person, being arraigned upon any indictment for any indictable offence, stands mute of malice, or will not answer directly to the indictment, then the Court, if it thinks fit, may order the proper officer to enter a plea of "not guilty" on behalf of such person, and the plea so entered shall have the full force and effect as if such person had actually pleaded it.

Pleas of autrefois convict or acquit

20. In any plea of autrefois convict or autrefois acquit, it shall be sufficient for any defendant to state that he has been lawfully convicted or acquitted (as the case may be) of the offence charged in the indictment.

PART 6

TRIAL, DEFENCE, VERDICT, ETC.

Defence by counsel

21. All persons tried for any indictable offence shall be admitted, after the close of the case for the prosecution, to make full answer and defence thereto by counsel learned in the law.

Rule for addresses by counsel to jury

22. (1) Upon any trial, the addresses to the jury shall be regulated as follows: the counsel for the prosecution, in the event of the defendant, or his counsel, not announcing, at the close of the case for the prosecution, his intention to adduce evidence, shall be allowed to address the jury a second time at the close of such case, for the purpose of summing up the evidence; and the accused, or his counsel, shall then be allowed to open his case, and also to sum up the evidence, if any evidence is adduced for the defence, and the right of reply shall be in accordance with the practice of the Courts in England.

(2) Where the only witness to the facts of the case called by the defence is the person charged, he shall be called as a witness immediately after the close of the evidence for the prosecution. In cases where the right of reply depends upon the question whether evidence has been called for the defence, the fact that the person charged has been called as a witness shall not of itself confer on the prosecution the right to reply, but the right of reply shall be always allowed to the Attorney General, or to any counsel acting on behalf of the Crown.

Accused entitled to inspect depositions at trial without fee

23. All persons under trial shall be entitled, at the time of their trial, to inspect, without fee or reward all depositions (or copies thereof) taken against them, and returned into the Court before which such trial is had.

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Accused entitled to a copy of the depositions

24. Every person indicted shall be entitled to a copy of the depositions returned into Court, if (when they are not demanded before the opening of the term, sittings or sessions) the Court is of opinion that the copies can be made without delay to the trial, but not otherwise; but the Court may, if it sees fit, postpone the trial on account of such copy of the depositions not having been previously had by the person charged.

Punishment of person attempting to commit offence, offence not being completed

25. If, on the trial of any person charged with an offence, it appears to the jury, upon the evidence, that the defendant did not complete the offence charged, but that he was guilty only of an attempt to commit the offence, the person shall not, by reason thereof, be entitled to be acquitted, but the jury shall be at liberty to return as their verdict, that the defendant is not guilty of the offence charged, but is guilty of an attempt to commit it, and thereupon such person shall be liable to be punished in the same manner as if he had been convicted on an indictment for attempting to commit the particular offence charged in the indictment.

No person after trial for any offence to be tried for attempting to commit same offence

26. No person shall be tried or prosecuted for an attempt to commit any offence, who has been previously tried for committing the same offence.

Verdict of assault may be found where offence charged

27. On the trial of any person for any offence whatever, where the crime charged includes an assault against the person, although an assault is not charged in terms, the jury may acquit of the offence, and find a verdict of guilty of an assault against the person indicted, if the evidence warrants such finding, and the person so convicted shall be liable to be imprisoned for a term of 2 years.

Proceedings upon indictment for committing any offence after a previous conviction

28. The proceedings upon any indictment for committing any offence after a previous conviction, or convictions, shall be as follows: the offender shall, in the first instance, be arraigned upon so much only of the indictment as charges the subsequent offence, and, if he pleads not guilty or, if the Court orders a plea of not guilty to be entered on his behalf, the jury shall be charged, in the first instance, to enquire concerning such subsequent offence only, and, if they find him guilty, or if on arraignment he pleads guilty, he shall then, and not before, be asked whether he was so previously convicted as alleged, and, if he answers that he was so previously convicted, the Court may proceed to sentence him accordingly, but, if he denies that he was so previously convicted, or stands mute of malice, or will not answer directly to such question, the jury shall then be charged to enquire concerning such previous conviction or convictions, and in such case it shall not be necessary to swear the jury again, but the oath already taken by them shall, for all purposes, be deemed to extend to such last-mentioned enquiry, but, if, upon the trial of any person for any such subsequent offence, such person gives evidence of his good character, the prosecutor, in answer thereto, may give evidence of the conviction of such person for the previous offence, or offences, before such verdict of guilty is returned, and the jury shall enquire concerning such previous conviction, or convictions, at the same time that they enquire concerning such subsequent offence.

No forfeiture of chattel which caused death

29. There shall be no forfeiture of any chattels which may have moved to, or caused the death, of any human being, in respect of such death.

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PART 7

EVIDENCE, ATTENDANCE OF WITNESSES, AMENDMENT, JUDGMENTS, ETC.

Notice of alibi

30. (1) On a trial on indictment the defendant shall not, without leave of the Court, adduce evidence in support of an alibi unless, before the end of the prescribed period, he gives notice of particulars of the alibi.

(2) Without prejudice to subsection (1), on any such trial, the defendant shall not without the leave of the Court call any other person to give evidence unless—

(a) the notice under that subsection includes the name and address of the witness or, if the name or address is not known to the defendant at the time he gives the notice, any information in his possession that might be of material assistance in finding the witness;

(b) if the name or address is not included in that notice, the Court is satisfied that the defendant, before giving the notice, took and thereafter continued to take all reasonable steps to secure that the name and address would be ascertained;

(c) if the name or address is not included in that notice, but the defendant subsequently discovers the name or address or receives other information that might be of material assistance in finding the witness, he forthwith gives notice of the name, address or other information, as the case may be; and

(d) if the defendant is notified by or on behalf of the prosecutor that the witness has not been traced by the name or at the address given, he forthwith gives notice of any such information that is then in his possession or, on subsequently receiving such information, forthwith gives notice of it.

(3) The Court shall not refuse leave under this section if it appears to the Court that the defendant was not informed in accordance with section 60 of the Magistrate's Code of Procedure Act.

(4) Any evidence tendered to disprove an alibi may, subject to any directions by the Court as to the time it is to be given, be given before or after evidence is given in support of the alibi.

(5) Any notice purporting to be given under this section on behalf of the defendant by his counsel shall, unless the contrary is proved, be deemed to have been given with the authority of the defendant.

(6) A notice under subsection (1) shall be given in Court during, or at the end of, the proceedings before the examining Magistrate or be given in writing to the Attorney General, and a notice under paragraph (2)(c) or (d) shall be given in writing to the Attorney General.

(7) A notice required under this section to be given to the Attorney General may be given by delivering it to him, or by leaving it at his office, or by sending it in a registered letter or by recorded delivery service addressed to him at his office.

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(8) In this section—

"evidence in support of an alibi" means evidence tending to show that, by reason of the presence of the defendant at a particular place or in a particular area at a particular time, he was not, or was unlikely to have been, at the place where the offence is alleged to have been committed at the time of its alleged commission;

"prescribed period" means the period of 7 days after the end of the proceedings before the examining Magistrate.

(9) In computing the prescribed period, Sunday and a day prescribed as a holiday under the Public Holidays Act shall be disregarded.

Abolition of right of accused to make unsworn statement

31. (1) Subject to subsections (2) and (3), in any criminal proceedings the accused shall not be entitled to make a statement without being sworn, and accordingly, if he gives evidence, he shall do so on oath and be liable to cross-examination, but this section shall not affect the right of the accused, if not represented by counsel, to address the Court or jury otherwise than on oath on any matter on which, if he were so represented, counsel could address the Court or jury on his behalf.

(2) Nothing in subsection (1) shall prevent the accused making a statement without being sworn—

(a) if it is one which he is required by law to make personally; or

(b) if he makes it by way of mitigation before the Court passes sentence upon him.

(3) Nothing in this section applies—

(a) to a trial; or

(b) to proceedings before the Magistrate's Court as examining justices;

that began before the 13th October, 2000.

Admissibility of written statements

32. (1) In this section "written statement" means a statement made by a person about a crime that is—

(a) reduced into writing by the person making it; or

(b) recorded by an officer of a competent authority referred to in subsection (2) before whom it is made and signed by the maker.

(Act 16/2022, s. 2)

(2) A competent authority referred to in subsection (1) includes—

(a) the Royal Anguilla Police Force;

(b) the Financial Intelligence Unit;

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(c) the Customs Department;

(d) the Department of Immigration;

(e) the Department of Inland Revenue; and

(f) any other governmental department or statutory body engaged in the conducting or investigation of a criminal offence.

(Act 16/2022, s. 2)

(3) In any criminal proceedings, other than committal proceedings, a written statement, with or without exhibits, by any person shall, if such of the conditions mentioned in subsection (4) as are applicable are satisfied, be admissible as evidence to the like extent as oral evidence to the like effect by that person.

(4) The conditions referred to in subsection (3) are—

(a) the statement purports to be signed by the person who made it;

(b) the statement contains a declaration by that person to the effect that it is true to the best of his knowledge and belief and that he made the statement knowing that if it were tendered in evidence, he would be liable to prosecution if he wilfully stated in it anything which he knew to be false or did not believe to be true;

(c) before the hearing at which the statement is tendered in evidence, a copy of the statement is served, by or on behalf of the party proposing to tender it, on each accused together with a notice that the accused may object to the admission of the evidence of any such statement or part thereof; and

(d) none of the other parties or their counsel, within 7 days from the service of the copy of the statement, serves a notice on the party so proposing objecting to the statement being tendered in evidence under this section;

but the conditions mentioned in paragraphs (c) and (d) do not apply if the parties agree before or during the hearing that the statement shall be so tendered.

(5) The following provisions shall also have effect in relation to any written statement tendered in evidence under this section—

(a) if the statement is made by a person under the age of 18, it shall give his age;

(b) if it is made by a person who cannot read it, it shall be read to him before he signs it and shall be accompanied by a declaration by the person who so read the statement to the effect that it was so read;

(c) if it refers to any other document as an exhibit, the copy served on any other party to the proceedings under paragraph (4)(c) shall be accompanied by a copy of that document or by such information as may be necessary in order to enable the party on whom it is served to inspect that document or a copy thereof;

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(d) in the case of a statement that indicates in pursuance of paragraph (a) that the person making it has not attained the age of 14, paragraph (4)(b) shall have effect as if for the words from "made" onwards there were substituted the words "understands the importance of telling the truth in it".

(6) Notwithstanding that a written statement made by any person may be admissible as evidence by virtue of this section—

(a) the party by whom or on whose behalf a copy of the statement was served may call that person to give evidence; and

(b) the Court may, of its own motion or on the application of any party to the proceedings, require that person to attend before the Court and give evidence.

(7) An application under paragraph (6)(b) to a Judge of the Court may be made before the hearing.

(8) So much of any statement as is admitted in evidence by virtue of this section shall, unless the Court otherwise directs, be read aloud at the hearing and where the Court so directs, an account shall be given orally of so much of any statement as is not read aloud.

(9) Any document or object referred to as an exhibit and identified in a written statement tendered in evidence under this section shall be treated as if it had been produced as an exhibit and identified in Court by the maker of the statement.

(10) A document required by this section to be served on any person may be served—

(a) by delivering it to him or to his counsel;

(b) by addressing it to him and leaving it at his usual or last known place of abode or place of business or by addressing it to his counsel and leaving it at his office;

(c) by sending it in a registered letter addressed to him at his usual or last known place of abode or place of business or addressed to his counsel at his office; or

(d) in the case of a body corporate, by delivering it to the secretary or clerk of the body at its registered or principal office or sending it in a registered letter addressed to the secretary or clerk of that body at that office.

Depositions may be read in evidence for other offence than that for which they were taken

33. Depositions taken in the preliminary or other investigation of any charge against any person may be read as evidence in the prosecution of such person for any other offence whatsoever, upon the like proof, and in the same manner in all respects, as they may according to law be read in the prosecution of the offence with which such person was charged when such depositions were taken.

Attendance of witness bound by recognizance to attend

34. Every person who is bound by recognizance to attend at any criminal sessions or sittings of the Court as a witness, whether for the prosecution or for the defence, in any case to be tried at such sessions or sittings, shall be bound to attend the Court, whether or not he has received any subpœna or notice, on the day appointed for the trial of such case, and on subsequent days of such sessions or

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sittings, until the case has been disposed of or until he has been discharged by the Court from further attendance.

Writs of subpœna

35. (1) Every person whose attendance as a witness, whether for the prosecution or for the defence, is required in any case, and who has not been bound by recognizance to attend as a witness at the criminal sessions or sittings at which such case is to be tried, shall be summoned by a writ of subpœna.

(2) Every such subpœna shall issue in the name of the King, and shall be tested in the name of the Chief Justice.

Duty to prepare subpœnas

36. (1) Subject to the provisions of subsection (2), the Registrar, on being furnished with the names and places of abode of any witnesses on behalf of the prosecution or defence whose attendance is required to be secured by subpœna, shall prepare for service a writ or writs of subpœna directed to such witnesses, together with as many copies thereof, as there may be witnesses named in such writ or writs.

(2) Notwithstanding the provisions of subsection (1), the Registrar, before a subpœna directed to any witness whose attendance is required on behalf of the defence is prepared, may require to be satisfied by evidence on oath or otherwise that that witness is likely to be able to give material evidence, but, nothing in this subsection shall be deemed to prejudice any right or power of the Court at the trial to call, or permit to be called, any witness.

(3) When application shall be made to postpone any trial by reason of the absence of any witness, it shall be taken as *prima facie* evidence, liable nevertheless to be rebutted, that the party applying for such postponement has not exercised all due and necessary diligence to secure the attendance of such witness if it shall appear that no subpœna to such witness was requested 4 clear days at the least before the first day of the criminal sessions or sittings.

Service of subpœnas

37. The Registrar, by himself or his assistants, shall with all diligence, serve, or attempt to serve, a copy of the writ of subpœna upon each witness to be served, and shall note every such service or attempted service with the time thereof upon the original writ of subpœna, and shall endorse and subscribe thereon a certificate of the service or non-service thereof, as the circumstances of the case may require; any such certificate shall be *prima facie* evidence of the facts stated therein.

Warrant for apprehension of witness not attending on recognizance

38. If any person who has been bound by recognizance to attend as a witness, whether for the prosecution or for the defence, at the trial of any case does not attend the Court on the day appointed for the trial of such case, and no reasonable excuse is offered for such non-attendance, the Court may issue a warrant to apprehend such person, and to bring him, at a time to be mentioned in the warrant, before the Court in order to give evidence on behalf of the prosecution or of the defence, as the case may be.

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Warrant for apprehension of witness disobeying summons

39. If any person to whom any writ of subpœna is directed does not attend the Court at the time and place mentioned therein, and no reasonable excuse is offered for such non-attendance, then, after proof upon oath, to the satisfaction of the Court that the writ was duly served, or that the person to whom the writ is directed wilfully avoids service, the Court, being satisfied by proof upon oath that he is likely to give material evidence, may issue a warrant to apprehend such person, and to bring him, at a time to be mentioned in the warrant, before the Court in order to give evidence on behalf of the prosecution or of the defence, as the case may be.

Fine for non-attendance of witness

40. Every person who makes default in attending as a witness in either of the cases mentioned in section 38 or 39 is liable, on the summary order of the Court, to a fine of $3,840, and in default of payment, to imprisonment for 2 months.

Warrant for apprehension of witness in first instance

41. (1) If a Judge is satisfied, by proof upon oath, that any person likely to give material evidence either for the prosecution or for the defence, on the trial of any case, will not attend to give evidence without being compelled to do so, he may order that, instead of a subpœna being issued, a warrant shall be issued in the first instance for the apprehension of such person.

(2) Every person arrested under such a warrant shall, if the trial of the case for which his evidence is required is appointed for a time which is more than 24 hours after the arrest, be taken before a Judge, and the Judge may, on his furnishing security by recognizance to the satisfaction of the Judge for his appearance at such trial, order him to be released from custody, or shall, on his failing to furnish such security, order him to be detained for production at such trial.

Mode of dealing with witness refusing to be sworn, etc.

42. (1) If any person attending the Court as a witness, either on his recognizance, or in obedience to a subpœna, or by virtue of a warrant, or being present in Court and being verbally required by the Court to give evidence in any case—

(a) refuses to be sworn as a witness;

(b) having been so sworn, refuses to answer any question put to him by or with the sanction of the Court; or

(c) refuses or neglects to produce any document which he is required by the Court to produce;

without in any such case offering any sufficient excuse for such refusal or neglect, the Court may, if it thinks fit, adjourn or postpone the trial of the case for any period not exceeding 8 days, and may in the meantime, by warrant, commit such person to prison.

(2) If such person, upon being brought before the Court at or before such adjourned or postponed trial, again refuses to do what is so required of him, the Court may, if it thinks fit, again adjourn or postpone the trial of the case, and commit him in like manner, and so again from time to time until such person consents to do what is so required of him.

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(3) Every such person who is guilty of such refusal or neglect is liable, on the summary order of the Court, either in addition to or in lieu of such punishment, to a fine of $3,840, and in default of payment, to imprisonment for 2 months.

(4) Nothing herein contained shall affect the liability of any such person to any other punishment or proceeding for refusing or neglecting to do what is so required of him, or shall prevent the Court from disposing of the case in the meantime, according to any other sufficient evidence produced before it.

Non-attendance of witness at adjourned trial

43. Every witness who is present when the trial or further trial of a case is adjourned, or who has been duly notified of the time to which such trial or further trial is so adjourned, shall be bound to attend at such time, and in default of so doing, may be dealt with in the same manner as if he had failed to attend before the Court in obedience to a subpœna to attend and give evidence.

Any person confined in any prison may be conveyed to the place where he is required

44. When the attendance of any person confined in any prison is required in any court of criminal jurisdiction in any case cognizable therein by indictment, the court before whom such prisoner is required to attend, or any Judge of such court, or of any superior court, may, before or during any such term or sitting at which the attendance of such person is required, make an order upon the Superintendent of Prisons or other person having the custody of such prisoner, to deliver such prisoner to the person named in such order to receive him, and such person shall, at the time prescribed in such order, convey such prisoner to the place at which such person is required to attend, there to receive and obey such further order as to the court may seem meet.

Crime or interest does not incapacitate a witness

45. No person offered as a witness shall, by reason of any alleged incapacity from crime or interest, be excluded from giving evidence on the trial of any criminal case, or in any proceeding relating or incidental to such case.

Persons so offered as witnesses are compellable to give evidence

46. Every person, so offered as a witness, shall be admitted and be compellable to give evidence on oath, notwithstanding that such person has, or may have, an interest in the matter in question, or in the event of the trial in which he is offered as a witness, or of any proceeding relating, or incidental, to such case, and notwithstanding that such person so offered as a witness has been previously convicted of a crime or offence.

Laws of England in relation to procedure to apply unless other provision made

47. All other matters of procedure not herein nor in any other Act expressly provided for shall be regulated, as to the admission thereof, by the law of England, and the practice of the Superior Courts of criminal law in England.

Where second jury, same right to challenge as in first jury

48. When any trial of an indictment for any offence is had before a second jury, the Crown and the defendant respectively shall be entitled to the same challenges as they were entitled to with respect to the first jury.

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Mode of making up record on conviction

49. In making up the record of any conviction or acquittal on any indictment, it shall be sufficient to copy the indictment with the plea pleaded thereto without any formal caption or heading; and the statement of the arraignment and the proceedings subsequent thereto shall be entered of record in the same manner as before 24th March, 1873, subject to any such alterations in the forms of such entry as may, from time to time, be prescribed by any rule of the Court.

Judgment not to be stayed or reversed for want of a similiter, etc.

50. Judgment, after verdict, upon an indictment for any offence shall not be stayed or reversed for want of a similiter, nor by reason that the jury process has been awarded to a wrong officer upon an insufficient suggestion, nor for any misnomer or misdescription of the officer returning such process, or of any of the jurors, nor because any person has served upon the jury who has not been returned as a juror by the Bailiff or other officer; and, where the offence charged is an offence created by any statute or subjected to a greater degree of punishment by any statute, the indictment shall after verdict be held sufficient, if it describes the offence in the words of the statute creating the offence or prescribing the punishment, although they are disjunctively stated or appear to include more than one offence or otherwise.

PART 8

ARRAIGNMENT AND TRIAL OF INSANE PERSONS

Procedure where person indicted appears on arraignment to be insane

51. If any accused person appears on arraignment to be insane, the Court may order a jury to be empanelled to try the sanity of such person, and the jury shall thereupon, after hearing evidence for that purpose, find whether such person is or is not insane and unfit to take his trial.

Procedure where person indicted appears during trial to be insane

52. If, during the trial of any accused person, such person appears to be insane, after the hearing of evidence to that effect or otherwise, to the jury before whom he is tried, the Court shall in such case direct the jury to abstain from finding a verdict upon the indictment, and, in lieu thereof, to return a verdict that such person is insane, but a verdict under this section shall not affect the trial of any person so found to be insane for the offence for which he was indicted, in case he subsequently becomes of sound mind.

Special verdict where accused person found guilty, but insane at date of act or omission charged

53. Where, in an indictment, any act or omission is charged against any person as an offence, and it is given in evidence on the trial of such person for that offence that he was insane, so as not to be responsible according to law for his actions at the time when the act was done or the omission made, then, if it appears to the jury before whom such person is tried that he did the act or made the omission charged, but was insane as aforesaid at the time when he did the act or made the omission, the jury shall return a special verdict to the effect that the accused person was guilty of the act or omission charged against him, but was insane as aforesaid at the time when he did the act or made the omission.

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Provision for custody of accused person found insane

54. Where any person is found to be insane under the provisions of section 51 or 52, or has a special verdict found against him under the provisions of section 53, the Court shall direct the finding of the jury to be recorded, and thereupon the Court may order such person to be detained in safe custody, in such place as the Court may appoint, until His Majesty's pleasure shall be known.

Judge to report finding to Governor

55. The Court shall immediately report the finding of the jury and the detention of such person to the Governor, who shall order such person to be dealt with as a criminal of unsound mind under the laws of Anguilla for the time being in force for the care and custody of criminals of unsound mind, or otherwise as he may think proper.

PART 9

PUNISHMENT—IMPRISONMENT

Similar punishment for capital offences whether by verdict or confession

56. Any person indicted for any offence made capital by any statute shall be liable to the same punishment, whether he is convicted by verdict or confession, and this, as well in the case of accessories as of principals.

Mode of punishment for indictable offence not capital

57. If any person be convicted of an indictable offence not punishable with death, committed after a previous conviction for an indictable offence, such person is, on subsequent conviction, liable to be imprisoned for 7 years unless some other punishment is directed by any statute for the particular offence by reason of its being a subsequent offence, in which case the offender shall be liable to the punishment thereby awarded, and not to any other.

Procuring discharge of prisoner by false pretence

58. Whosoever, knowingly and unlawfully under colour of any pretended authority, directs, or procures, the discharge of any prisoner not entitled to be so discharged, is guilty of an offence, and is liable to be imprisoned for 2 years, and the person so charged shall be held to have escaped.

Where no definite term of imprisonment or fine is fixed by law

59. When imprisonment is to be awarded for any offence, and no definite period is fixed by law, the term of such imprisonment shall always be in the discretion of the Court passing the sentence, and, when a fine is to be awarded for any offence, and no amount is fixed, the amount shall be in the discretion of the Court passing the sentence.

Sentence to commence from day it is passed

60. The period of imprisonment, in pursuance of any sentence, shall commence on and from the day of passing such sentence, but no time, during which the convict may be out on bail, shall be reckoned as part of the term of imprisonment to which he is sentenced.

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Imprisonment for a subsequent offence, before expiration of imprisonment for prior offence

61. Whenever sentence is passed for an offence on a person already imprisoned under sentence for another crime, the Court may award imprisonment for the subsequent offence, to commence at the expiration of the imprisonment to which such person has been previously sentenced, and, where such person is already under sentence of imprisonment, the Court may award sentence for the subsequent offence, to commence at the expiration of the imprisonment for which such person has been previously sentenced, although the aggregate term of imprisonment may exceed the term for which such punishment could otherwise have been awarded.

Persons convicted may be sentenced by the Court to be imprisoned, etc.

62. When a person has been convicted of an offence for which imprisonment may be awarded, the Court may sentence the offender to be imprisoned.

PART 10

JUDGMENT OF DEATH

Execution of prisoner under sentence of death

63. Whenever any offender has been convicted before the Court of an offence for which the offender is liable to, and receives, a sentence of death, the Court shall order and direct execution to be done on the offender in the manner provided by law.

Judge to report to Governor case of any prisoner under sentence of death, and Judge in certain cases may reprieve

64. In the case of any prisoner sentenced to the punishment of death, the Judge, before whom such prisoner has been convicted, shall, without delay, make a report of such case to the Governor previously to the sentence being carried into execution, and, if the Judge thinks such prisoner ought to be recommended for the exercise of the Royal mercy or, if from the non-decision of any point of law reserved in the case or from any other causes, it is necessary to delay the execution, he, or any other Judge of the same Court, or who might have held, or sat in, such Court, may, from time to time, either in term or in vacation, reprieve such offender for such period, or periods, beyond the time fixed for the execution of sentence, as may be necessary for the consideration of the case by the Crown.

Prisoner, after sentence of death, to be kept apart in safe custody

65. Every person sentenced to suffer death shall, after judgment, be confined in some safe place within the prison apart from all other prisoners, and no person but the Superintendent of Prisons and his servants, the medical officer or surgeon of the prison, a chaplain or a minister of religion, shall have access to any such convict without the permission in writing of the Court, before whom such convict was tried, or of the Bailiff.

Governor to appoint place of execution

66. Judgment of death to be executed on any prisoner shall be carried into effect in such place as the Governor shall direct.

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Execution within walls of prison

67. (1) In case such execution shall be directed to take place within the walls of the prison, this section applies to the execution.

(2) The Bailiff charged with the execution, the Superintendent of Prisons and medical officer or surgeon of the prison, such other officers of the prison and such persons as the Bailiff requires shall be present at the execution.

(3) Any Justice of the Peace and such relatives of the prisoner or other persons as it seems to the Bailiff proper to admit within the prison for the purpose, and any minister of religion who may desire to attend, may also be present at the execution.

(4) As soon as may be after judgment of death has been executed on the offender, the medical officer or surgeon of the prison shall examine the body of the offender, shall ascertain the fact of death, and shall sign a certificate thereof and deliver it to the Bailiff.

(5) The Bailiff and the Superintendent of Prisons, and such Justices and other persons present (if any) as the Bailiff requires or allows to be present shall also sign a declaration to the effect that judgment of death has been executed on the offender.

(6) The duties imposed upon the Bailiff, Superintendent of Prisons, medical officer or surgeon by subsections (2) to (5) may, and shall in his absence, be performed by his lawful deputy or assistant or other officer or person ordinarily acting for him or conjointly with him in the performance of his duties.

(7) The Coroner shall, within 24 hours after the execution, hold an inquest on the body of the offender, and the jury at the inquest shall enquire into and ascertain the identity of the body, and whether judgment of death was duly executed on the offender, and the inquisition shall be in duplicate, and one of the originals shall be delivered to the Bailiff.

(8) No officer of the prison, or prisoner confined therein, shall, in any case, be a juror on the inquest.

(9) The Governor in Council may make such rules and regulations to be observed on the execution of judgment of death in every prison, as he may deem expedient for the purpose, for guarding against any abuse in such execution, and for giving greater solemnity to it, and for making known without the prison walls the fact that such execution is taking place.

(10) Any person who knowingly and wilfully signs any false certificate or declaration required with respect to any execution is guilty of an offence and on conviction is liable to imprisonment for 2 years.

(11) Every certificate and declaration and the duplicate of the judgment required by this Act shall in each case be sent with all convenient speed by the Bailiff to the Governor or to such other officer as may be appointed for the purpose by the Governor in Council, and printed copies of them shall, as soon as possible, be exhibited, and shall, for at least 24 hours, be kept exhibited on or near the principal entrance of the prison within which judgment of death is executed.

(12) The omission to comply with any provision of subsections (2) to (11) shall not make the execution of death illegal in any case where such execution would otherwise have been legal.

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(13) Except in so far as is hereby otherwise provided, judgment of death shall be carried into effect in the same manner as if subsections (2) to (12) had not been passed.

PART 11

PARDONS

Crown may extend Royal mercy

68. The Crown may extend the Royal mercy to any person sentenced, by virtue of any statute, to imprisonment although such person is imprisoned for non-payment of money to some party other than the Crown.

When pardon granted, offender still liable for any other offence

69. When the Crown is pleased to extend the Royal mercy to any offender convicted of an offence punishable with death or otherwise, and, by warrant under the hand and seal of one of the Principal Secretaries of State, or by warrant under the hand and seal of the Governor, grants to such offender either a free or a conditional pardon, the discharge of such offender out of custody, in the case of a free pardon, and the performance of the condition, in the case of a conditional pardon, shall have the effect of a pardon under the Great Seal of such offender as to the offence for which pardon has been granted; but no free pardon, nor any discharge in consequence thereof, nor any conditional pardon, nor the performance of the condition thereof, in any of the cases aforesaid, shall prevent, or mitigate, the punishment to which such offender might otherwise be lawfully sentenced on subsequent conviction for any offence, other than that for which the pardon was granted.

Commutation of sentence

70. The Crown may commute the sentence of death passed upon any person convicted of a capital crime to imprisonment for any term of years not less than 2 years; and an instrument under the hand and seal of the Governor declaring such commutation of sentence, shall be sufficient authority to any of His Majesty's Judges, or Justices, having jurisdiction in such cases, or to any officer to whom such instrument is addressed, to give effect to such commutation and to do all such things, to make such orders, and to give such directions, as may be requisite for the charge or custody of the convict, and for his conduct to, and delivery at, a prison, and his detention therein, according to the terms on which his sentence has been commuted.

Nothing herein to affect the Royal Prerogative

71. Nothing in this Act shall in any manner limit or affect His Majesty's royal prerogative of mercy.

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PART 12

UNDERGOING SENTENCE EQUIVALENT TO PARDON

Imprisonment to have the effect of pardon, but the person pardoned is liable for subsequent offence

72. When any offender has been convicted of an offence not punishable with death, and has endured the punishment to which such offender was adjudged, or, if such offence is punishable with death and the sentence has been commuted, then, if such offender has endured the punishment to which his sentence was commuted, the punishment so endured shall, as to the offence of which the offender was so convicted, have the like effects and consequences as a pardon under the Great Seal, but nothing herein contained, nor the enduring of such punishment, shall prevent, or mitigate, any punishment to which the offender might otherwise be lawfully sentenced on a subsequent conviction for any other offence.

PART 13

GENERAL PROVISIONS

Offences within Admiralty jurisdiction

73. Any offence punishable under the laws of Anguilla that has been committed within the jurisdiction of the Court of Admiralty in Anguilla may be dealt with, enquired of, and tried and determined, in the same manner as any other offence committed within Anguilla.

Nothing to affect His Majesty's land or naval forces

74. Nothing contained in this Act shall alter or affect any of the laws relating to the government of His Majesty's land or naval forces.

Continuous bail

75. Where, on any adjournment of a criminal proceeding, either in the High Court or before the Magistrate, the accused is admitted to bail, the recognizance may be conditioned for his appearance at every time and place to which the proceeding may be from time to time adjourned, but nothing in this section shall prejudice the power of the Court or Magistrate at any subsequent adjournment of the proceeding to refuse to admit the accused to bail or, as a condition of such person being admitted to bail, to require him to enter into another recognizance as the Court or Magistrate may direct.

Taking of recognizance of bail

76. For removing doubts it is hereby declared that where, as a condition of the release of any person, he is required to enter into a recognizance with sureties, the recognizances of the sureties may be taken separately and either before or after the recognizances of the principal and, if so taken, the recognizances of the principal and sureties shall be as binding as if they had been taken together and at the same time.

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Definition of "month" in sentence of imprisonment

77. In any sentence of imprisonment the word "month" shall, unless the contrary is expressed, be construed as meaning "calendar month".

Recovery of costs

78. (1) Where by virtue of any law in force in Anguilla the Court makes an order for the payment of costs against any offender convicted on indictment by the Court, the order shall be enforced (except where the law under which the order is made provides some other method of enforcement), by the issue of a writ of execution to levy upon and sell the goods, chattels, lands and tenements of the person against whom the order is made; and in case such person shall not have sufficient goods, chattels, lands and tenements on which a levy may be made to satisfy such order, he is liable to a sentence of imprisonment for a term of 12 months unless such costs are sooner paid.

(2) Where any offender convicted as aforesaid has made default in complying with an order of the Court for the payment of costs within the time limited therein for that purpose, a writ of execution in Form 1 set out in the Schedule shall be issued against him from the Registrar's Office to levy upon and sell the goods, chattels, lands and tenements of such offender. The writ, which shall be delivered to the Bailiff, shall be his authority for levying and recovering the sum due for the costs and for taking into custody the body of the offender in case sufficient goods, chattels, lands and tenements shall not be found whereon levy may be made.

Power of Court to fine on conviction of offence

79. (1) Where any offender is convicted by the Court for an offence (not being an offence the sentence for which is fixed by law), the Court shall have power to fine the offender in lieu of or in addition to dealing with him in any other manner in which the Court has power to deal with him.

(2) For the purposes of this section, the expression "an offence the sentence for which is fixed by law" means an offence for which the Court is required to sentence the offender to death or imprisonment for life or to detention during His Majesty's pleasure.

Power of Court in relation to fines

80. (1) Subject to the provisions of this section, where a fine is imposed by the Court, an order may be made in accordance with the provisions of this section—

(a) allowing time for the payment of the amount of the fine;

(b) directing payment of the amount by instalments of such amounts and on such dates respectively as may be specified in the order; and

(c) fixing a term of imprisonment which the person liable to make the payment is to undergo if any sum which he is liable to pay is not duly paid or recovered;

but any term of imprisonment fixed under this subsection in default of payment of a fine shall not exceed 12 months.

(2) Any order made under this section providing for any such matters as are mentioned in paragraph (1)(a) or (b) may be made by the Court upon application in writing to the Registrar of the Court and may amend any previous order made under this section so far as it provides for those

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matters, but no application shall be made under this subsection after the refusal of a previous application made thereunder.

(3) Where any person liable for the payment of a fine to which this section applies is sentenced by the Court to, or is serving or otherwise liable to serve, a term of imprisonment, the Court may order that any term of imprisonment fixed under paragraph (1)(c) shall not begin to run until after the end of the first-mentioned term of imprisonment.

Incidental provisions as to fines

81. (1) Save as is otherwise provided in subsection (3), all fines payable by virtue of section 80 shall be paid to the Registrar who shall issue a receipt therefor, and where default is made in payment of the fine or any instalment thereof, the Registrar shall cause a warrant to issue against the defaulter committing him to prison. The warrant shall be in Form 2 set out in the Schedule.

(2) Where an order is made directing payment of a fine by instalments and default is made in the payment of any one instalment, the same proceedings may be taken as if default had been made in payment of all the instalments then remaining unpaid.

(3) Where an order is made fixing a term of imprisonment in default of payment of a fine, then—

(a) on payment of the fine to the Registrar, or (if the person in respect of whom the order was made is in prison) to the Superintendent of Prisons, the order shall cease to have effect; and, if the person is in prison and is not liable to be detained for any other cause, he shall forthwith be discharged; and

(b) on payment to the Registrar or to the Superintendent of Prisons of a part of the fine, the total number of days in the term of imprisonment shall be reduced proportionately, that is to say, by such number of days as bears to the total number of days less one day the proportion most nearly approximating to, without exceeding, the proportion which the part paid bears to the amount of the fine.

(4) Any sums received by the Superintendent of Prisons under subsection (3) shall be paid by him to the Registrar.

Citation

82. This Act may be cited as the Criminal Procedure Act, Revised Statutes of Anguilla, Chapter C150.

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SCHEDULE

FORMS

(Sections 78 and 81)

FORM 1

(Section 78)

WRIT OF EXECUTION

IN THE HIGH COURT

CHARLES THE THIRD, by the Grace of God, of the United Kingdom of Great Britain and Northern Ireland, and of His other Realms and Territories, King, Head of the Commonwealth, Defender of the Faith.

To the Bailiff of Anguilla.

WE command you that of the goods and chattels and lands and tenements of A.B. …….. of ……..……. you cause to be levied the sum of $ ……, which said sum of money the said A.B. was by a judgment of our said High Court, bearing date the …… day of ……, 20 ……., adjudged to pay for costs and, in case you cannot find sufficient goods and chattels and lands and tenements of said A.B. then you are to take the body of the said A.B. and lodge him in His Majesty's Prison at …….. in Anguilla for a period of …….. months unless the said sum of $ ……. be sooner paid, for which you will be answerable, and have you then and there this Writ.

Witness the Honourable ……...……. , Justice of Our Eastern Caribbean Supreme Court, the …… day of ……, 20 ……. .

Registrar

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FORM 2

(Section 81)

WARRANT OF COMMITTAL

IN THE HIGH COURT

To each and all the Police Officers of Anguilla

And

To the Superintendent of Prisons.

THE KING vs. A.B.

A.B., ……..…….. hereinafter called the accused, was this day/ on the ……..……. day of ……..……..…. , 20…..……, convicted by the High Court of the offence of …… and ordered by the said Court to pay a fine *(here set forth the adjudication shortly)* …….. .

And the accused has (paid part of the said fine, to wit, the amount of $ …….. but has) made default in payment (of a balance of $ ……..).

It is ordered that the accused be imprisoned in His Majesty's Prison aforesaid and there kept for a period of ……..…… months/weeks/days unless the said fine/balance be sooner paid.

You the said Police Officers are hereby commanded to take the accused and convey him to the said Prison and there deliver him to the Superintendent of Prisons together with this Warrant; and you the Superintendent of Prisons are hereby authorised to receive the accused into your custody, and keep him for the period of ……..…… months/weeks/days unless the said fine/balance be sooner paid, and if the said sum/balance is paid to you the Superintendent of Prisons, you shall forthwith discharge the accused from your custody unless he is liable to be detained in the said Prison for any other cause.

Dated the ……..…….. day of ……, 20……. . .

By order of the Court,

Registrar

Fine .....$

.....$

Imprisonment in default

.....$

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