



**AN BILLE UM CHEARTAS COIRIÚIL, 1981  
CRIMINAL JUSTICE BILL, 1981**

*Mar a tionscnaíodh  
As initiated*

**ARRANGEMENT OF SECTIONS**

**Section**

1. Abolition of death penalty.
2. Sentence for treason and murder.
3. Special provision in relation to certain murders.
4. Minimum period of imprisonment for treason and murder to which *section 3* applies.
5. Restrictions on power to commute or remit punishment or grant temporary release.
6. Procedure in cases of murder to which *section 3* applies.
7. Consequential amendments.
8. Transitional provision.
9. Repeals.
10. Short title.

Abolition of death penalty.

Sentence for treason and murder.

Special provision in relation to certain murders.

**FIRST SCHEDULE**

**CONSEQUENTIAL AMENDMENTS**

**SECOND SCHEDULE**

**ENACTMENTS REPEALED**

**ACTS REFERRED TO**

Children Act, 1908	1908, c. 67
Criminal Justice Act, 1951	1951, No. 2
Criminal Justice Act, 1960	1960, No. 27
Criminal Justice Act, 1964	1964, No. 5
Defence Act, 1954	1954, No. 18
Genocide Act, 1973	1973, No. 28
Offences against the Person Act, 1861	1861, c. 100
Offences against the State Act, 1939	1939, No. 13

Offences against the State (Amendment) Act, 1940  
 Piracy Act, 1837  
 Prisoners of War and Enemy Aliens Act, 1956  
 Prisons Acts, 1826 to 1980  
 Treason Act, 1939

1940, No. 2  
 1837, c. 88  
 1956, No. 27  
 1939, No. 10

AN BILL TO AMEND THE CRIMINAL JUSTICE ACT, 1981  
 CRIMINAL JUSTICE BILL, 1981

Mr. A. H. H. H. H.

BILL

As introduced

BILL

ARRANGEMENT OF SECTIONS

1. Abolition of death penalty.
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5. Restrictions on power to commute or remit punishment or grant temporary release.
6. Procedure in cases of murder to which section 3 applies.
7. Transitional arrangements.
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FIRST SCHEDULE

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AN BILLE UM CHEARTAS COIRIÚIL, 1981  
CRIMINAL JUSTICE BILL, 1981

**BILL**

*entitled*

5 AN ACT TO ABOLISH THE DEATH PENALTY AND SUBSTITU-  
TUTE IMPRISONMENT FOR LIFE, TO PROVIDE THAT  
A MINIMUM PERIOD OF IMPRISONMENT SHALL BE  
SERVED BY PERSONS CONVICTED OF TREASON AND  
CERTAIN MURDERS AND TO PROVIDE FOR OTHER  
10 CONNECTED MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

- 1. — No person shall suffer death for any offence.
- 2. — A person convicted of treason or murder shall be sentenced to imprisonment for life.
- 15 3. — (1) This section applies to—
  - (a) murder of a member of the Garda Síochána acting in the course of his duty,
  - (b) murder of a prison officer acting in the course of his duty,
  - 20 (c) murder done in the course or furtherance of an offence under section 6, 7, 8 or 9 of the Offences against the State Act, 1939, or in the course or furtherance of the activities of an unlawful organisation within the meaning of section 18 (other than paragraph (f)) of that Act, and
  - 25 (d) murder, committed within the State for a political motive, of the head of a foreign State or of a member of the government of, or a diplomatic officer of, a foreign State.
- (2) (a) Murder to which this section applies shall be a distinct offence from murder and a person shall not be convicted of that offence unless *mens rea* is proved in relation to all the ingredients of the offence as specified in the relevant paragraph of *subsection (1)*.
- 30 (b) Save as otherwise provided by this Act, the law and procedure relating to murder shall apply to the offence.
- (3) In this section—

Transitional provisions.

Repeals.

Minimum term of period of imprisonment for treason and murder to which section 3 applies.

Restrictions on power to commit or remit punishment or grant temporary release.

Abolition of death penalty.  
Sentence for treason and murder.

Special provision in relation to certain murders.

Procedure in cases of murder to which section 3 applies.

Consequential amendments.

“diplomatic officer” means a member of the staff of a diplomatic mission of a foreign State having diplomatic rank;

“prison” means any place for which rules or regulations may be made under the Prisons Acts, 1826 to 1980, section 7 of the Offences against the State (Amendment) Act, 1940, section 233 of the Defence Act, 1954, section 2 of the Prisoners of War and Enemy Aliens Act, 1956, or section 13 of the Criminal Justice Act, 1960;

“prison officer” includes any member of the staff of a prison and any person having the custody of, or having duties in relation to the custody of, a person detained in a prison.

Minimum period of imprisonment for treason and murder to which section 3 applies.

4.—Where a person is convicted of treason or of murder to which section 3 applies, the court, in passing sentence, shall specify a period of not less than forty years as the minimum period of imprisonment to be served by that person.

Restrictions on power to commute or remit punishment or grant temporary release.

5.—(1) The power conferred by section 23 of the Criminal Justice Act, 1951, to commute or remit a punishment shall not, in the case of a person serving a sentence passed on him on conviction of treason or of murder to which section 3 applies, be exercisable before the expiration of the minimum period specified by the court under section 4 less any reduction of that period under subsection (2) of this section.

Abolition of death penalty. Sentence for treason and murder.

(2) The rules or practice whereby prisoners generally may earn remission of sentence by industry and good conduct shall apply in the case of a person serving a sentence passed on him on conviction of treason or of murder to which section 3 applies as if he had been sentenced to a term of imprisonment equal to the minimum period specified by the court under section 4, and that period shall be reduced by the amount of any remission which he has so earned.

Special provision in relation to certain murders.

(3) Any power conferred by rules made under section 2 of the Criminal Justice Act, 1960, to release temporarily a person serving a sentence of imprisonment shall not, in the case of a person serving a sentence passed on him on conviction of treason or of murder to which section 3 applies, be exercisable during the period for which the commutation or remission of his punishment is prohibited by subsection (1) of this section unless for grave reasons of a humanitarian nature, and any release so granted shall be only of such limited duration as is justified by those reasons.

Procedure in cases of murder to which section 3 applies.

6.—(1) Where a person is accused of murder which is alleged to be murder to which section 3 applies, he shall be charged in the indictment with murder to which that section applies.

(2) A person indicted for murder to which section 3 applies may—

(a) if the evidence does not warrant a conviction for such murder but warrants a conviction for murder, be found not guilty of murder to which that section applies but guilty of murder, and

(b) if the evidence does not warrant a conviction for murder but warrants a conviction for manslaughter, be found not guilty of murder to which that section applies but guilty of manslaughter.

Consequential amendments.

7.—The enactments mentioned in the *First Schedule* are hereby amended in the manner specified therein.

8.—For the purpose of any proceedings on, or preliminary or subsequent to, a person's trial on a charge of capital murder, that charge and any plea or finding of guilty of capital murder shall be treated as having been a charge of, or a plea or finding of guilty of, murder to which *section 3* applies.

Transitional provision.

9.—(1) The enactments set out in the *Second Schedule* are hereby repealed to the extent specified therein.

Repeals.

(2) The repeal by this Act of section 1 of the Offences against the Person Act, 1861, shall not affect the operation of sections 64 to 68 of that Act.

10.—This Act may be cited as the Criminal Justice Act, 1981.

Short title.

## FIRST SCHEDULE

Section 7.

### CONSEQUENTIAL AMENDMENTS

1. In section 2 of the Piracy Act, 1837, "and on conviction thereof shall be sentenced to imprisonment for life" shall be inserted at the end of the section.

2. Section 103 of the Children Act, 1908, shall have effect in relation to a child or young person who is convicted of an offence for which an adult would be required to be sentenced to imprisonment for life as it had effect before the passing of this Act in relation to a child or young person convicted of an offence for which an adult would have been required to be sentenced to death.

3. Section 1 of the Treason Act, 1939, shall be amended as follows:

(a) in subsections (1) and (2) "be sentenced on conviction thereof to imprisonment for life" shall be substituted for "be liable on conviction thereof to suffer death", and

(b) in subsection (3) "murder to which *section 3* of the *Criminal Justice Act, 1981*, applies" shall be substituted for "capital murder" (inserted therein by the *Criminal Justice Act, 1964*).

4. The Defence Act, 1954, shall be amended as follows:

(a) in section 50 (2) "death," shall be deleted;

(b) in sections 124 and 125 "imprisonment for life" shall be substituted for "death";

(c) in section 126 (2) (iii) "for any term not exceeding two years" shall be inserted after "imprisonment";

(d) in sections 127 and 128 "imprisonment for life" shall be substituted for "death";

(e) in sections 133, 134, 135 (1) (b), 136, 137 (1), 140, 141, 142 (b), 143, 144, 145, 146, 147, 148, 150, 152, 153, 156, 157, 159 (1), 160, 161 (2), 162, 163, 164 (1), 165, 166, 167 and 168 (1) "for any term not exceeding two years" shall be inserted after "imprisonment";

(f) the following section shall be substituted for section 169:

"Offences punishable by ordinary law.

169.—(1) Subject to the provisions of this Act, every person who, while he is subject to military law, commits any of the offences referred to in this section shall be deemed to be guilty of an offence against military law and, if charged under

this section with any such offence (in this Act referred to as a civil offence) shall be liable to be tried by court-martial.

(2) Where a person charged under this section is convicted by a court-martial of treason or murder, he shall be sentenced to imprisonment for life.

(3) Where a person charged under this section is convicted by a court-martial of an offence other than treason or murder, he shall be liable to be punished as follows:

(a) if he is convicted of manslaughter, be liable to suffer penal servitude or any less punishment awardable by a court-martial;

(b) if he is convicted of rape, be liable to suffer penal servitude or any less punishment awardable by a court-martial;

(c) if he is convicted of an act of genocide which would be punishable under the Genocide Act, 1973, be liable—

(i) in case the offence consists of the killing of any person, to imprisonment for life, or

(ii) in any other case, to imprisonment for a term not exceeding fourteen years;

(d) if he is convicted of any offence not before in this section particularly specified which when committed in the State is punishable by the ordinary criminal law of the State, be liable, whether the offence is committed in the State or elsewhere, either to suffer any punishment assigned for such offence by the law of the State or, if he is subject to military law as an officer, dismissal with ignominy from the Defence Forces or any less punishment awardable by a court-martial or, if he is subject to military law as a man, imprisonment for any term not exceeding two years or any less punishment awardable by a court-martial.”;

(g) the following section shall be inserted after section 169:

“Trial of treason and certain murders by court-martial.

**169A.—**(1) A person subject to military law who is accused of murder which is alleged to be murder to which *section 3* of the *Criminal Justice Act, 1981*, applies and is to be tried by court-martial shall be charged with murder to which that section applies, and the following provisions of that Act, namely—

(a) *section 4*, with the substitution of ‘court-martial’ for ‘court’, and

(b) *subsection (2)* of *section 6*, with the substitution of ‘charged with’ for ‘indicted for’,

shall apply and have effect in relation to the trial.

(2) The said *section 4* shall apply and have effect in relation to the trial of a person subject to military law who is accused of treason, with the substitution of 'court-martial' for 'court' ”;

- 5 (h) in section 192 (2) (d) “for any term not exceeding two years” shall be inserted after “imprisonment”;
- (i) in section 198, subsection (2) shall be deleted;
- (j) in sections 209 (1) and 210 (1) “Imprisonment for life” shall be substituted for “Death”;
- 10 (k) in section 210 (6) “imprisonment for life or” shall be inserted before “penal servitude” in each place where those words occur;
- (l) in subsections (7) and (10) of section 210 “for any term not exceeding two years” shall be inserted after
- 15 “imprisonment”;
- (m) section 212 shall not apply to a sentence of imprisonment for life;
- (n) in section 220, subsection (2) shall be deleted and, in subsection (3), “imprisonment for life on conviction of treason or of murder to which *section 3* of the *Criminal Justice Act, 1981*, applies” shall be substituted for “death”;
- 20 (o) in section 221 (1) “(other than a sentence of death)” shall be deleted and the following proviso added:
- “Provided that—
- 25 (i) the said power of mitigation or remission shall not, in the case of a sentence of imprisonment for life passed on a person on conviction of treason or of murder to which *section 3* of the *Criminal Justice Act, 1981*, applies, be exercisable before the expiration of the minimum period specified by the court-martial under
- 30 *section 4* of that Act, as applied by *section 169A* of this Act, less any reduction of that period under *paragraph (ii)* of this proviso, and
- (ii) the rules or practice whereby prisoners generally may earn remission of sentence by industry and good conduct shall apply in the case of a person serving a sentence passed on him on conviction of treason or of murder to which the said *section 3* applies as if he had been sentenced to a term of imprisonment equal to the minimum period specified by the court-martial under the said *section 4*, as applied by *section 169A* of this Act, and that period shall be reduced by the amount of any remission which he has so earned.”;
- 35
- 40
- (p) in section 222, paragraph (a) and “in any other case” in paragraph (b) shall be deleted;
- 45 (q) the following subsection shall be added to section 223:

“(10) This section shall not apply to a sentence of imprisonment for life on conviction of treason or of

murder to which *section 3* of the *Criminal Justice Act, 1981*, applies.”;

(r) section 227 shall be deleted;

(s) the following subsection shall be inserted in section 228 after subsection (1):

“(1A) Where a sentence of imprisonment for life is passed by a court-martial and confirmed, the military prisoner shall, as soon as practicable, be committed to a public prison to undergo his sentence according to law, and subsections (2) to (7) of this section shall have effect in relation to him—

(a) as if each reference therein to a military convict were a reference to a military prisoner and each reference to a penal servitude prison a reference to a public prison, and

(b) as if the reference in the said subsection (7) to penal servitude were a reference to imprisonment.”;

(t) section 229 shall not apply to a military prisoner sentenced to imprisonment for life; and

(u) the following subsection shall be inserted in section 233 after subsection (2):

“(2A) Any power conferred by rules under this section to release a person temporarily shall not, in the case of a person serving a sentence passed on him on conviction of treason or of murder to which *section 3* of the *Criminal Justice Act, 1981*, applies, be exercisable during the period for which the power to mitigate or remit his punishment is prohibited by *paragraph (i)* of the proviso (inserted by that Act) to section 221 (1) of this Act unless for grave reasons of a humanitarian nature, and any such release shall be only of such limited duration as is justified by those reasons.”

Section 9.

SECOND SCHEDULE

ENACTMENTS REPEALED

Chapter or Number and Year	Short Title	Extent of Repeal
C. 48.	Judgment of Death Act, 1823.	The whole Act.
C. 54.	Criminal Law (Ireland) Act, 1828.	Section 13. In sections 15 and 21, the words “not punishable with death”.
C. 100.	Offences against the Person Act, 1861.	Sections 1 to 3. In section 71, the words “otherwise than with death”.
C. 24.	Capital Punishment Amendment Act, 1868.	The whole Act.
C. 78.	Juries Procedure (Ireland) Act, 1876.	Section 13.
C. 49.	General Prisons (Ireland) Act, 1877.	Proviso in section 40.



Chapter or Number and Year	Short Title	Extent of Repeal
No. 27 of 1926.	Court Officers Act, 1926.	Section 53.
No. 15 of 1928.	Courts of Justice Act, 1928.	In subsection (1) of section 6, the words "death or". Subsection (2) of section 6.
No. 2 of 1951.	Criminal Justice Act, 1951.	In subsection (1) of section 23, the words "Except in capital cases,".
No. 27 of 1956.	Prisoners of War and Enemy Aliens Act, 1956.	Subsection (1) of section 5.
No. 11 of 1962.	Geneva Conventions Act, 1962.	In subsection (1) (b) of section 6 and in subsection (1) of section 8, the words "to death or". In subsection (2) of section 8, the words "remains a sentence of death, or".
No. 5 of 1964.	Criminal Justice Act, 1964.	The whole Act, except sections 4 and 11.
No. 28 of 1973	Genocide Act, 1973.	Section 4.
No. 14 of 1976.	Criminal Law (Jurisdiction) Act, 1976.	Subsection (6) of section 20.

2. Similar provisions are included in paragraph 4 of the First Schedule in relation to persons subject to military law who are convicted by a court-martial of treason or the murders in question. It is also proposed to substitute life imprisonment for the death penalty in relation to certain purely military offences, e.g. mutiny with violence.

4. Section 2 provides that the penalty for treason and murder shall be imprisonment for life.

5. The effect of sections 3 and 4 is that the trial court in sentencing a person convicted of treason or of a murder which is now 'capital' murder must specify a minimum period of imprisonment to be served by him. That period must not be less than 40 years. Section 3 (2) (a) makes it clear that the necessary criminal intent (*mens rea*) on the part of the person must be established in relation to all the ingredients constituting such a murder.

6. Section 5 provides that the power of the Government or of the Minister for Justice under section 23 of the Criminal Justice Act 1951 to commute or remit punishment will not be exercisable during the minimum period of imprisonment specified by the court under section 3.

7. Subsection (1) of section 6 provides that the power of the Government or of the Minister for Justice to grant temporary release to a person sentenced to imprisonment for life shall be exercisable only in respect of a person who has served at least 10 years of his term of imprisonment and who has been found to be of good character and of good conduct. Under subsection (2) of section 6, the power of the Government or of the Minister for Justice to grant temporary release to a person sentenced to imprisonment for life shall be exercisable only in respect of a person who has served at least 10 years of his term of imprisonment and who has been found to be of good character and of good conduct.

**BILLE**

**BILL**

*(mar a tionscnaíodh)*

*(as initiated)*

*dá ngairtear*

*entitled*

Acht do chur deireadh le pionós an bháis agus do chur príosúnacht saoil ina ionad, dá fhoráil go ndéanfaidh daoine a chiontófar i dtréas agus i ndúnmharaithe áirithe fóstréimhse príosúnachta a chur isteach agus do dhéanamh socrú i dtaobh nithe eile a bhaineann leis na nithe sin.

An Act to abolish the death penalty and substitute imprisonment for life, to provide that a minimum period of imprisonment shall be served by persons convicted of treason and certain murders and to provide for other connected matters.

*An Seanadóir Gemma Uí Eodhusa a thíolaic,  
7 Deireadh Fómhair, 1981.*

*Presented by Senator Gemma Hussey,  
7th October, 1981.*

SECOND SCHEDULE

ENACTMENTS REPEALED

Chapter or Number and Year	Short Title	Extent of Repeal
C. 48.	Judgment of Death Act, 1823.	The whole Act.
C. 54.	Criminal Law (Ireland) Act, 1875.	Section 17.
C. 47.	Capital Punishment Amendment Act, 1886.	The whole Act.
C. 47.	Prisoners (Ireland) Act, 1876.	Provision in section 1.
C. 47.	General Prisons (Ireland) Act, 1877.	Provision in section 1.

**BAILE ÁTHA CLIATH:  
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR**

**DUBLIN:  
PUBLISHED BY THE STATIONERY OFFICE**

Le ceannach díreach ón Oifig Dhíolta Foilseachán Rialtais, An Stuara, Ard Oifig an Phoist, Baile Átha Cliath, nó trí aon díoltóir leabhar.

To be purchased through any bookseller, or directly from the Government Publications Sale Office, G.P.O. Arcade, Dublin.

Clóbhuailte ag CAHILL PRINTERS LIMITED.

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45p

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