

The Trinidad and Tobago Miscellaneous Provisions (Administration of Justice) Bill, 2014

BILL ESSENTIAL

**THE TRINIDAD AND TOBAGO MISCELLANEOUS
PROVISIONS (ADMINISTRATION OF JUSTICE) BILL, 2014**

Background

The Miscellaneous Provisions (Administration of Justice) Bill, 2014, was introduced into the House of Representatives on March 21, 2014.

What is the purpose of the Bill?

To amend the Administration of Justice (Deoxyribonucleic Acid) Act, 2012, the Jury Act, Chap. 6:53, the Criminal Offences Act, Chap. 11:01, the Dangerous Drugs Act, Chap. 11:25, the Indictable Offences (Preliminary Enquiry) Act, Chap. 12:01, the Young Offenders Detention Act, Chap. 13:05 and the Police Service Act, Chap. 15:01.

Relative Legislation mentioned in the Bill

- The Administration of Justice (Deoxyribonucleic Acid) Act, 2012;
- The Jury Act, Chap. 6:53;
- The Criminal Offences Act, Chap. 11:01;
- Dangerous Drugs Act, Chap. 11:25;
- The Indictable Offences (Preliminary Enquiry) Act, Chap. 12:01;
- Immigration Act, Chap. 18:01;
- Mutual Assistance in Criminal Matters Act;
- The Young Offenders Detention Act, Chap. 13:05; and
- The Police Service Act, Chap. 15:01.

Key Features of the Proposed Legislation:

Among other amendments, the Bill:

1. makes provision for the Act to have effect even though it is inconsistent with sections 4 and 5 of the Constitution;
2. **will amend the Administration of Justice (Deoxyribonucleic Act) Act, 2012¹ by:**

¹ Administration of Justice (Deoxyribonucleic Act) Act, 2012. <http://www.news.gov.tt/archive//E-Gazette/Gazette%202012/Acts/Act%20No.%205%20of%202012.pdf>

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- i) introducing definitions for the following terms “DNA Record”, “exonerated” and “private security officer” as well amending the existing definitions of the terms “intimate sample”, “non-intimate sample”, and “qualified person”;
 - ii) renumbering section 10 as section 10(1) with the insertion of three paragraphs after paragraph (a) which outlines the functions of the Custodian to:
 - o “have sole custody and control of the Forensic DNA Databank;
 - o have sole custody of all DNA profiles received by him for uploading onto the Forensic DNA Databank;
 - o determine the suitability of DNA profiles for uploading onto the Forensic DNA Databank”²; and
 - o in subsection (2) deems the Custodian to be a Government expert;
 - iii) deleting section 16(1) and inserting a new section 16(1) which would ensure that a citizen of Trinidad and Tobago who has been deported from any place outside of Trinidad and Tobago shall submit to the taking of a non-intimate DNA sample upon arrival in Trinidad and Tobago;
 - iv) by inserting section 23A after section 23 which would make provisions for the keeping of a “DNA Record”;
 - v) repealing section 25 and substituting a new section 25 with subsections (1) to (4) which would deal with the retention of DNA samples;
 - vi) repealing section 26(11) and (12) and substituting new subsections (11) and (12) which would deal with the destruction of DNA samples;
 - vii) inserting Form 1A after Form 1, and Form 6 in the Second Schedule to deal with recording the witness present at the taking of a sample, and the taking of a sample from a child or an incapable person, respectively;
 - viii) introducing a Fourth Schedule under section 15 of the Act, to identify specific persons who will be required to give an intimate DNA sample;
3. **will amend the Jury Act, Chap. 6:53 by:**
- ix) amending certain definitions in section 2 of the Act;

² Miscellaneous Provisions (Administration of Justice) Bill, 2014. Pg. 11.

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- x) amending section 4 of the Act to amend the process for the selection and qualification of jurors by increasing the maximum age limit from sixty-five years to seventy years and abolishing the link between property ownership, marriage for women and eligibility;
- xi) amending section 6 of the Act to provide for the maximum age limit for eligibility to be increased to seventy years when the list is being revised;
- xii) amending section 7 of the Act to eliminate the exception of spouses of judges, Members of Parliament, Mayors and Deputy Mayors, Magistrates, Justices of the Peace, Attorneys-at-law, and members of the Police Service from jury service;
- xiii) inserting a new section 7A which would make provisions for persons over the age of sixty-five and the spouses of legal and judicial officers, to be eligible to be excused from jury service;
- xiv) repealing section 8 of the Act and substituting it with a new section 8 which makes provisions for the qualifications of special jurors to be based on persons who have expertise and specialized knowledge in the areas of finance, banking, accounting, business, economics, management, securities or investment;
- xv) amending section 9 of the Act to provide for a consequential amendment to the information contained on the registration record card of a special juror;
- xvi) amending section 11 of the Act to provide for a consequential amendment to the juror list based on the amendment to the qualifications of a special juror;
- xvii) amending section 12 of the Act to make provisions for information published in the *Gazette* to be amended to exclude the electronic publication of personal information such as place of abode, sex, business and occupation of the juror;
- xviii) amending section 19(3) of the Act, to delete the word “criminal”;
- xix) repealing section 22 of the Act to eliminate the facility to compose a jury of only men;
- xx) amending section 26 of the Act to provide for a trial judge to permit the jury to separate before and after they have been directed to consider their verdict;
- xxi) amending section 28(5) of the Act to delete the reference to “civil trials”;
- xxii) repealing section 29 of the Act and substituting a new section to provide for the striking of special juries in specific cases regarding complex fraud, offences under the

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Proceeds of Crime Act, financing of terrorism, offences under the Securities Act and any other matters of a sufficiently complex nature;

xxiii) amending section 31 of the Act to provide for a consequential amendment to the qualifications of special jurors;

xxiv) repealing section 32 of the Act and substituting a revised section that will clarify the cumbersome procedure involving in the striking of special juries;

xxv) repealing section 33 of the Act and substituting a revised section that will make provisions for the fees and expenses for special juries to be borne by the State;

xxvi) amending section 42 of the Act which will increase the fine from one thousand dollars to fifty thousand dollars and to one year imprisonment for an employer who either dismisses an employee who serves on a jury, or tries to dissuade or prevent an employee from serving as a juror;

xxvii) amending the Schedule to the Act by revising Form A to ensure consistency with the amendments made to the jury list in sections 11 and 12;

4. **will amend the Criminal Offences Act, Chap. 11:01 by:**

xxviii) creating an offence in a new section 11(2) where a person who knows or reasonably believes that another person is assisting in the investigation of an offence or a witness or a potential witness in any judicial proceeding, and uses force, threats, bribery or other means to intimidate or dissuade that person from assisting in the investigation or giving evidence or influencing that person to provide false evidence, withhold true evidence, not attend court as a witness or not produce any document, record or other object in evidence;

xxix) creating an offence in a new section 11(3) where a person knows or reasonably believes that another person is a juror or a potential juror in any judicial proceeding and uses threats, force, bribery or other means to intimidate or dissuade that person from serving as a juror or influencing any decision made by that person during a judicial proceeding;

xxx) creating an offence in the a section 11(4) where a juror who misconducts himself or surrenders to any improper influences in connection with the performance of his functions as a juror, would be liable on conviction on indictment to a fine of fifty thousand dollars and to imprisonment for five years;

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xxxi) creating an offence in a new section 11(5) where a person knows or reasonably believes that another person has assisted in the investigation of an offence, given evidence in any judicial proceeding, be it civil or criminal, or served as a juror and agreed with a particular verdict and does any act which injures, or is intended to injure or cause the other person to fear injury because of his role;

xxxii) creating an offence in a new section 11(6) where any person uses threats, force, bribery or other means to intimidate or influence a judicial officer or an officer of the court acting in performance of his duties in relation to any civil or criminal proceeding;

xxxiii) in new section 11(7), making it immaterial that the threats, force, bribery or other acts conducted by a person is done otherwise than in the presence of the victim or to another person other than the victim. A person who commits an offence under subsections (2), (3), (5) or (6) would be liable on conviction on indictment to a fine of one hundred thousand dollars and to imprisonment for twenty years;

5. will amend the Dangerous Drugs Act, Chap. 11:25 by:

xxxiv) amending section 5(7B) by increasing the penalty for the offence of drug trafficking to “fifty thousand dollars or, where there is evidence of the street value of the dangerous drug, three times the street value of the dangerous drug, whichever is greater, and to imprisonment for a term of ten years”;

6. will amend the Indictable Offences (Preliminary Enquiry) Act, Chap. 12:01 by:

xxxv) amending section 16 by inserting after subsection (5), a new subsection (6) which states that section 39(1) shall apply to any evidence contained in a certified transcript of a recorded electronic audio recording, video recording or Computer Aided Transcription under section 16(3), of evidence given in a preliminary enquiry as it applies to a deposition taken in such proceedings, but in its application to any such deposition, that subsection shall have effect as if paragraphs (b) and (c) thereof were omitted;

7. will amend the Young Offenders Detention Act, Chap. 13:05 by:

xxxvi) repealing section 7(3) which would remove the restriction that the Minister must give his approval before a sentence passed by a Court of Summary Jurisdiction can be carried into effect;

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8. **will amend the Police Service Act, Chap. 15:01 by:**

xxxvii) repealing section (50) and substituting a new section (50) which would give a police officer the power to take and record for the purpose of identification, the measurement and photograph of a person who is a detainee or an accused. In instances where a person is discharged or acquitted by a Court, all the records relating to the measurement and photograph would be kept by the Commissioner;

xxxviii) inserting a new section 50A after section 50, which would give a police officer the power to take and record for the purpose of identification, the fingerprint impression of a person without consent, where a fingerprint impression is derived from a crime scene and there are reasonable grounds for suspecting that the person was involved in the commission of an offence related to the crime scene and believing that fingerprint analysis could confirm or disprove the suspicion. The fingerprint impression would be analysed and the data derived from the analysis would be kept. The Commissioner would cause this data to be transferred to the National Fingerprint Database;

xxxix) inserting a new section 50B which would give a police officer the power to retake a fingerprint impression of a person any time after the taking of a fingerprint impression under section 50A, where it is determined that the quality of the fingerprint impression is unsuitable or insufficient for analysis, the impression is lost or accidentally destroyed, or cannot be used for any other reason. In spite of the fact that the quality of a fingerprint impression is neither suitable nor sufficient, the impression would not be destroyed and the Commissioner would cause that data to be transferred to the National Fingerprint Database;

xl) inserting a new section 50C, which would require a police officer or an immigration officer at all ports of entry into Trinidad and Tobago, to take and record the fingerprint impression of both a citizen of Trinidad and Tobago without the consent of the citizen where he/she has been deported from any place outside of Trinidad and Tobago, and any person entering Trinidad and Tobago who is not a citizen of Trinidad and Tobago. The Minister may by Regulations, make provisions related to the taking, recording, storing, retention and disposal of a fingerprint impression, on the entry of a person who is not a Trinidad and Tobago citizen. This impression would be analysed and the resulting data kept. The Commissioner would cause this data to be transferred to the National Fingerprint Database;

xli) inserting a new section 50D, which would allow a police officer who is required to serve a summons on a person to appear before a court as a defendant in a criminal case, to serve on the person a Notice requiring that person to attend on such date and time and at such place as specified in the Notice for the purpose of giving a fingerprint impression. This impression would be analysed and the resulting data would be kept. The

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Commissioner would cause the data to be transferred to the National Fingerprint Database;

- xlii) inserting a new section 50E, which would provide for cases where a fingerprint impression is to be taken under section 50A from a child or an incapable person, that the impression would not be taken unless a representative of the child or incapable person is present when the fingerprint impression is taken. The impression would be analysed and the data kept. The Commissioner would cause the data to be transferred to the National Fingerprint Database. The representative of the child or incapable person would, upon the impression given by the child or incapable person, sign the form set out as Form 1 in the Sixth Schedule;
- xliii) inserting a new section 50F, which would empower a police officer taking a measurement, photograph or fingerprint impression under sections 50A, 50B, 50C, 50D, and 50E, to use reasonable force to take and protect that measurement, photograph or fingerprint impression;
- xliv) inserting a new section 50G, which would create an offence where a person refuses to give a measurement, photograph or fingerprint impression under sections 50A, 50B, 50C, or 50D. Such a person would be liable on summary conviction to a fine of ten thousand dollars and to imprisonment for two years;
- xlv) inserting a new section 50H, which would create an offence where a person resists or obstructs an officer in the exercise of his functions under sections 50A, 50B, 50C, 50D or 50E. Such a person would be liable on summary conviction to a fine of ten thousand dollars and to imprisonment for two years;
- xlvi) inserting a new section 50I, which would allow a police officer to take the fingerprint impression of any person who volunteers to give his fingerprint impression during an investigation for the purpose of analysis. This impression would be analysed and the data kept. The Commissioner would cause that data to be transferred to the National Fingerprint Database. A person who volunteers to give his/her fingerprint impression would be required to submit the form set out as Form 2 in the Sixth Schedule;
- xlvii) inserting a new section 50J, which would require a fingerprint impression taken under sections 50A, 50B, 50C, 50D, or 50I, to be kept for a minimum period of five years from the date on which the data was entered into the National Fingerprint Database, and thereafter the fingerprint impression may be destroyed. However, a Court may order that a fingerprint impression that has been taken under this Act, shall not be destroyed, if the Court is satisfied that the fingerprint impression might reasonably be required for the investigation or prosecution of an offence or for purposes of an appeal;

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xlvi) inserting a new section 50K, which would establish the “National Fingerprint Database”.

xlix) inserting a new section 50L, which would require the Central Authority, when in receipt of a request for assistance relating to any data in the National Fingerprint Database from a country pursuant to an Order under section 40(1) of the Mutual Assistance in Criminal Matters Act, to forward the request to the Commissioner who would provide the Central Authority with the relevant data. The Commissioner may request the Central Authority request from a country the relevant data to which an Order under section 40(1) exists, in respect of an investigation for an offence committed in Trinidad and Tobago;

9. will amend the Immigration Act, Chap. 18:01 by:

i) inserting sections 4(3) and 4A where section 4(3) would require a citizen of Trinidad and Tobago who has been deported to have his fingerprint impression taken, and section 4A would require a non-Trinidad and Tobago citizen who has been permitted to Trinidad and Tobago, upon entering to have his fingerprint impression taken;

10. would provide for the commencement of section 50C of the Police Service Act, Chap. 15:01, and sections 4(3) and 4A of the Immigration Act, Chap. 18:01 by Proclamation by the President.

Considerations

The Bill:

Amendments to Administration of Justice (Deoxyribonucleic Acid) Act

- i) makes provisions for the keeping of a DNA Record;
- ii) makes provisions for Trinidad and Tobago citizens who have been deported to submit to the taking of a non-intimate DNA sample upon arrival in Trinidad and Tobago;
- iii) provides for the introduction of a Fourth Schedule under section 15 of the which identifies specific persons who will be required to give an intimate DNA sample;
- iv) an update on the operationalization of the original provisions of this Act is required. Whether the Forensic DNA Databank and Laboratories have been established are matters for consideration.

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Amendments to Jury Act

- v) makes provisions for the amendment of the process for selection and qualification of jurors and may have the effect of creating a wider and more diverse pool of jurors available for trials;
- vi) makes provisions for the elimination of the exception of spouses of Judges, Members of Parliament, Mayors and Deputy Mayors, Magistrates, Justices of the Peace, Attorneys-at-law and members of the Police Service from jury service under the Jury Act;
- vii) makes provisions for the elimination of the facility to compose a jury of men only under the Jury Act;
- viii) makes provisions for the qualifications of special jurors to be based on persons who have specialized knowledge and expertise in the areas of accounting, management, finance, economics, business, banking, investment and securities under the Jury Act;
- ix) makes provisions for an increase in the fine for employers who either dismiss employees who serve on a jury or try to dissuade them from serving as a juror from one thousand dollars to fifty thousand dollars and to one year imprisonment under the Jury Act.

Amendments to Criminal Offences Act, Chap. 11:01

- x) provides for the creation of offences related to the obstruction of justice.

Amendments to Dangerous Drugs Act, Chap. 11:25

- xi) provides for an increase in the penalty for the offence of drug trafficking to fifty thousand dollars and to imprisonment for a term of ten years.

Amendments to Young Offenders Detention Act, Chap. 13:05

- xii) makes provisions for the removal of the restriction that the Minister must give his approval before a sentence passed by a Court of Summary Jurisdiction can be carried into effect.

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Amendments to Police Service Act, Chap. 15:01

- xiii) grants police officers the power to take and record the measurement and photograph of an accused or a detainee for identification purposes, the power to take and record a fingerprint impression of a person without consent on certain grounds;
- xiv) makes provisions for the establishment of a National Fingerprint Database, which will be under the control and custody of the Commissioner;
- xv) makes provisions for the taking of a fingerprint impression of a child or incapable person once there is a representative present;
- xvi) creates an offence for any person who refuses to give a measurement, photograph or fingerprint impression under sections 50A, B, C and D.

Similar Legislation in other territories

Country	Legislation	Remarks
Bahamas	Dangerous Drugs Act. ³	An Act to regulate the importation, exportation, Manufacture, sale and use of dangerous drugs.
South Australia	Criminal Law (Forensic Procedures) Act, 2007. ⁴	An Act to provide for carrying out forensic procedures to obtain evidence relevant to the investigation of criminal offences; to make provision for a DNA database system; and for other purposes.
United Kingdom	✓ Criminal Justice Act 2003 ⁵	An Act to make provision about criminal justice (including the powers and duties of the police) and about dealing with

³ Dangerous Drugs Act. Bahamas. http://laws.bahamas.gov.bs/cms/images/LEGISLATION/PRINCIPAL/2000/2000-0043/DangerousDrugsAct_1.pdf

⁴ Criminal Law (Forensic Procedures) Act, 2007. [http://www.legislation.sa.gov.au/LZ/C/A/CRIMINAL%20LAW%20\(FORENSIC%20PROCEDURES\)%20ACT%202007/CURRENT/2007.5.UN.PDF](http://www.legislation.sa.gov.au/LZ/C/A/CRIMINAL%20LAW%20(FORENSIC%20PROCEDURES)%20ACT%202007/CURRENT/2007.5.UN.PDF)

⁵ <http://www.legislation.gov.uk/ukpga/2003/44/contents>

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	<p>✓ The Police and Criminal Evidence (Amendment) (Northern Ireland) Order 2007⁶</p> <p>✓ Police and Criminal Evidence Act 1984 (<i>Code of practice for the identification of persons by police officers</i>)⁷</p>	<p>offenders; to amend the law relating to jury service; to amend Chapter 1 of Part 1 of the Crime and Disorder Act 1998 and Part 5 of the Police Act 1997; to make provision about civil proceedings brought by offenders; and for connected purposes.</p>
Jamaica	Criminal Justice (Administration) Act. ⁸	An act to make special provisions in relation to the mode of trial and punishment of certain offences, and for related purposes. ⁹

References

Administration of Justice (Deoxyribonucleic Act) Act, 2012. <http://www.news.gov.tt/archive//E-Gazette/Gazette%202012/Acts/Act%20No.%205%20of%202012.pdf>

Criminal Justice (Administration) Act. <http://moj.gov.jm/laws/criminal-justice-administration-act>

⁶ http://www.legislation.gov.uk/nisi/2007/288/pdfs/uksi_20070288_en.pdf

⁷ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/117599/pace-code-d.pdf

⁸ Criminal Justice (Administration) Act. <http://moj.gov.jm/sites/default/files/laws/Criminal%20Justice%20%28Administration%29%20Act.pdf>

⁹ Criminal Justice (Administration) Act. <http://moj.gov.jm/laws/criminal-justice-administration-act>

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Criminal Law (Forensic Procedures) Act, 2007.

[http://www.legislation.sa.gov.au/LZ/C/A/CRIMINAL%20LAW%20\(FORENSIC%20PROCEDURES\)%20ACT%202007/CURRENT/2007.5.UN.PDF](http://www.legislation.sa.gov.au/LZ/C/A/CRIMINAL%20LAW%20(FORENSIC%20PROCEDURES)%20ACT%202007/CURRENT/2007.5.UN.PDF)

Dangerous Drugs Act. .

http://laws.bahamas.gov.bs/cms/images/LEGISLATION/PRINCIPAL/2000/2000-0043/DangerousDrugsAct_1.pdf

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