



THE PARLIAMENT OF
TRINIDAD AND TOBAGO

BILL ESSENTIALS

Date introduced: 9 November, 2018

House: House of Representatives

Minister: The Attorney General and
Minister of Legal Affairs

HOR Bill No: 20 of 2018

Links: The links to the Bill, and its
progress can be found on the Bill's
home page through the Parliament's
website, www.ttparliament.org

BILL ESSENTIALS

BILL ESSENTIALS NO. 7, 2018–19

7 JANUARY, 2019

The Administration of Justice (Indictable Proceedings) (Amendment) Bill, 2018

BACKGROUND	2
KEY FEATURES OF THE BILL.....	2
Amendment to the Interpretation Section.....	2
Amendment to the Power to issue Search Warrant.....	3
Institution of Indictable Proceedings and Compelling Appearance of Accused	3
Summons of Appearance of Accused.....	3
Warrant for the Apprehension of the Accused.....	4
Appearance before a Magistrate	4
Warrant Endorsed for Bail.....	5
Concurrent Jurisdiction of Masters and Magistrates	5
Initial Hearing	5
Summary Trial for Certain Indictable Offences	6
Notice of Alibi	6
Irregularity in Complaint, Summons, Warrant, Service or Arrest	6
Conveying Accused to Prison	6
Sufficiency Hearing	7
Review of Evidence.....	7
Admissibility of Prosecution Statements.....	7
Further Evidence.....	7
Prima Facie Case	8
Discharge of Accused and Order to put on Trial.....	8
Use of Certified Copy of Statements, Fresh Evidence and DPP to refer case to be tried summarily	8
Discretion of the DPP to Prefer an Indictment	8
Accused admitting guilt at Sufficiency Hearing	9
New Sections 28A to 28E inserted	9
Recording answer of Accused – Sec. 28A.....	9
Bail on Committal for Trial – Sec. 28B.....	9
Apprehension of Accused on Bail but about to Abscond – Sec. 28C.....	9
Power to revoke or require higher bail – Sec. 28D	9
Place of Commitment - Sec. 28E.....	9
Binding Over Witnesses to Attend Trial.....	9
Restriction on Publication of Report of Sufficiency Hearing	10
Schedules.....	10
REFERENCES	10
KEY LEGISLATION	10

BACKGROUND

1. **The Administration of Justice (Indictable Proceedings) (Amendment) Bill, 2018¹** (hereinafter referred to as “the Bill”) aims to amend the **Administration of Justice Indictable Proceedings Act No. 20 of 2011** (hereinafter referred to as “the Act”).
2. The Bill provides for the abolition of preliminary enquiries and for the holding of initial and sufficiency hearings by a Master of the High Court where a person is charged with an indictable offence.
3. The Bill was introduced and read a First Time in the House of Representatives by the Attorney General on November 9, 2018.

KEY FEATURES OF THE BILL

Amendment to the Interpretation Section

4. **Clause 3** of the Bill proposes to amend **Section 3** of the **Act²** by introducing the following new definitions:

<i>arrest warrant</i>	means a warrant issued under section 6 or 8 for the apprehension of an accused
<i>documentary exhibit</i>	includes a statement, extract, photograph, computer printout or other document
<i>either-way offence</i>	means an offence which is triable on indictment or summarily; or an offence specified in Schedule 2
<i>indictable offence</i>	means an offence which is triable only on indictment or an either-way offence
<i>interpreter</i>	means a person who holds a valid licence, or who is appointed, under the Interpreters Act Chap. 6:54
<i>Keeper</i>	has the meaning assigned to it by section 2 of the Summary Courts Act Chap. 4:20³
<i>prison</i>	means any place referred to in section 3 of the Prisons Act Chap. 13:01⁴ or declared or appointed a prison under that Act
<i>search warrant</i>	means a warrant issued under section 5(1)

¹ <http://www.ttparliament.org/legislations/b2018h22.pdf>

² <http://www.ttparliament.org/legislations/a2011-20.pdf>

³ “Keeper” means the officer having the charge of any prison in Trinidad and Tobago

⁴ https://rgd.legalaffairs.gov.tt/laws2/Alphabetical_List/lawspdfs/13.01.pdf

5. **Clause 3** also proposes to amend the definition of “*prosecutor*” to include a police prosecutor. References to Justices of the Peace would be changed to Clerks of the Peace⁵ who perform certain functions in the absence of Magistrates (Clerks of the Peace are appointed pursuant to Section 5 of the **Summary Courts Act, Chap 4:20**⁶).

Amendment to the Power to issue Search Warrant

6. **Clause 4** of the Bill proposes to amend **Section 5** of the Act by providing for the following:
- i. The contents of computers and electronic devices can be searched under a search warrant which can be executed on a Saturday, Sunday or public holiday.
 - ii. A constable who executes a search warrant would not be required to carry seized items before a Master but would be required to file a report in the High Court describing the items seized pursuant to the search warrant and to serve a copy of the report on the owner or occupier of the place searched or a person from whom any item was taken.
 - iii. The Commissioner of Police would be able to authorise persons, other than the police, to have the custody of seized items for safe keeping.
 - iv. Photographs of seized items which are taken by a police photographer in the presence of a Justice of the Peace would be admissible in evidence and provision would be made for seized items which are no longer needed as evidence in criminal proceedings to be restored to the persons from whom they taken, whether or not the criminal proceedings have been determined.
 - v. The destruction of forged instruments if an indictment is not preferred and for searches involving explosive, dangerous or noxious substances and the disposal of those substances.

Institution of Indictable Proceedings and Compelling Appearance of Accused

7. **Clause 5** seek to amend **Section 6** of the Act to provide for a statutory form for a complaint, which would be contained in the new Schedule 1.

Summons of Appearance of Accused

8. **Clause 6** proposes to amend **Section 7** of the Act by inserting a new subsection (9) which would establish that a statutory form (**Form 5**) for a summons would also be included in the new Schedule 1.

⁵ A Clerk of the Peace is attached to each of the Magistrates Courts in the 13 magisterial districts in Trinidad and Tobago.

⁶ http://rgd.legalaffairs.gov.tt/laws2/alphabetical_list/lawspdfs/4.20.pdf

Warrant for the Apprehension of the Accused

9. **Clause 7** proposes an amendment to **Section 8** of the Act to establish and specify the relevant criteria for the issuing of an arrest warrant, which includes:
- The nature and seriousness of the offence;
 - The likelihood of the accused evading service of a summons
 - The character of the antecedents, associations and social ties of the accused; and
 - Any other factor which appears to be relevant.
10. **Clause 7** will also repeal subsection (7) of **Section 8** of the Act which allows the Magistrate to remand the accused into custody or where applicable fix bail and transmit the record of the proceedings and all relevant evidence to a Master in the instance where an accused is apprehended under subsection (6)⁷.

Appearance before a Magistrate

11. **Clause 8** of the Bill proposes to insert a **new Section 8A** into the Act. This new section would provide for the following:
- The procedure to be followed where an accused appears before a Magistrate on a charge for an indictable offence, including an either-way offence.
 - A summary offence which is related to an offence to be tried on indictment would be sent to the High Court to be dealt with and tried together with the relevant indictable offence [**New Section 8A(3)**].
 - Where a Magistrate sends a case to the High Court, the Magistrate would issue a notice to the Registrar of the Supreme Court specifying the offences with which the accused has been charged, cause the notice to be served on the accused and filed in the High Court. It furthermore requires that a copy of each complaint be filed in the High Court [**New Section 8A(5)**]
 - Following the service of a copy of the notice on the accused, the accused would appear before a Master on the next available session day⁸ that the High Court sits as determined by the Registrar or on such other day as may be agreed between the accused and the prosecutor with the approval of the Registrar [**New Section 8A (7)**].
 - A Magistrate would have the power to grant bail or remand the accused in custody and to adjourn the appearance of the accused before him for no more than twenty-eight (28) clear days [**New Section 8A(8)-(9)**].

⁷ Subsection (6) of the Act provides:

“ Where an accused is apprehended upon a warrant, he shall, without delay and as soon as practicable after he is apprehended, be brought before a Master or, where this is not possible, a Magistrate.”

⁸ Session day is defined in the chausure of the subsection(7) as ‘a day on which the High Court sits or is to sit in accordance with the Supreme Court of Judicature Act.

- A Magistrate may also in the absence of the accused, order the accused to be further remanded for longer than twenty-eight (28) clear days. It should be noted that the Magistrate is required to be satisfied that an accused who has been remanded is unable to appear before him at an adjournment, by reason of illness, accident. [**New Section 8A(10)**].

Warrant Endorsed for Bail

12. **Clause 9** of the Bill seeks to incorporate the references to “*arrest warrant*” into **Section 9** of the Act.

Concurrent Jurisdiction of Masters and Magistrates

13. **Clause 10** of the Bill seeks to amend **Section 10** of the Act by:
 - Enabling Clerks of the Peace to exercise concurrent jurisdiction with Magistrates and Masters in the issuance of search warrants, summons and arrest warrants, receiving complaints, granting of bail, taking recognisances and remanding an accused in custody [see **Clause 10 (a)**].
 - Specifying that a Magistrate or Clerk of the Peace issuing a search warrant, is required to endorse it with a direction that anything seized be dealt with in accordance with Section 5 of the Act.
 - It also requires that a copy of any document which is required under **Section 5(3)(a)** of the Bill be delivered to a Master, be also delivered to the Magistrate or Clerk of the Peace issuing the warrant with the timeframes specified in **Section 5(3)**.
 - **New subsection (2A)** seeks to provide where a Magistrate or Clerk of the Peace issues a warrant, he is required to endorse it with a direction that the person arrested be brought before a Master to be dealt with in accordance with Part II of the Act.
 - A Master or Magistrate would also be empowered to issue summons and arrest warrants for persons accused of having committed within or outside of Trinidad and Tobago, any indictable offence triable according to the law for the time being in force in Trinidad and Tobago [**New subsection (4)**].

Initial Hearing

14. **Clause 11** of the Bill seeks to amend **Section 11** of the Act to allow for the conduct of initial hearings with respect to summary offences which are related to indictable offences. It also specifies the documents which the police would be required to submit to the Director of Public Prosecutions under a Scheduling Order. Such documents include:
 - The complaint;
 - Any account given by the accused in an interview or a statement;

- Any written statement of a witness or document exhibit;
- Any list of other exhibits;
- The accused’s criminal record; and
- Any available statement of the effect of the offence on a victim, a victim’s family or any other person.

Summary Trial for Certain Indictable Offences

15. **Clause 12** will amend **Section 12** of the Act to enable a prosecutor to inform a Master when any either-way offence is to be dealt with summarily. The amendment will also enable both fine and imprisonment to be imposed where a person is summarily convicted of an indictable offence.

Notice of Alibi

16. **Clause 13** of the Bill seeks to amend **Section 13** of the Act as follows:
- to increase, from five (5) days to ten (10) days, the period for an accused to give particulars of his alibi to the Director of Public Prosecutions [see **Clause 13 (a)**].
 - where an accused has not given notice of his alibi to the Director of Public Prosecutions within the ten-day period, he would not be able to adduce evidence of or in support of an alibi at the trial without the leave of the Court [**See Clause 13(b)**⁹].
 - where on trial on indictment, an accused shall not without leave of the Court adduce evidence of or in support of an alibi unless he has given particulars of the alibi in accordance with subsection (1) or (3A) [**See Clause 13(b)**¹⁰].
 - where the Court grants leave, the Court would also be required to give the prosecutor sufficient time to prepare to test the evidence (**See Clause 13(b)**¹¹).

Irregularity in Complaint, Summons, Warrant, Service or Arrest

17. **Clause 14** of the Bill would amend **Section 15** of the Act by inserting a new subsection (3). The provision would enable a Master to make any necessary amendments to remedy any irregularity, defect or error in a complaint, summons or warrant.

Conveying Accused to Prison

18. **Clause 15** of the Bill would amend **Section 18** of the Act in relation to the conveying of accused persons to the prison. The amendment will substitute references to “*the Commissioner of Prisons*” with references to “*the Keeper*” which would be defined in Section 3 of the Act.

⁹ This will insert a New subsection (3A) in Section 13.

¹⁰ This will insert a New subsection (3B) in Section 13

¹¹ This will insert a New subsection (3c) in Section 13.

19. The Keeper will therefore be responsible for, *inter alia*, issuing a receipt in respect of the conveyance of an accused person into his custody, receive and detain an accused where a remand warrant is delivered to him, cause an accused who is on remand to be brought before a Master at the time and place fixed by the warrant for that purpose.

Sufficiency Hearing

20. **Clause 16** of the Bill would amend **Section 19** of the Act by inserting a new subsection (5A) which would now provide that the failure of an accused to file documents within the time specified in the Scheduling Order would not prevent a Master from proceeding with and concluding a sufficiency hearing. A reference to “*initial hearing*” would also be corrected to refer to a “*sufficiency hearing*”.

Review of Evidence

21. **Clause 17** of the Bill would amend **Section 20** of the Act by repealing subsection (3) and deleting paragraph (b) and substituting a new paragraph (b).
22. This proposed amendment would afford the prosecutor or the accused an opportunity to be heard by way of oral or written submission at a sufficiency hearing. It also removes the provision for all witness statements and other documentary evidence to be read aloud for an accused who is not represented by an Attorney-at-Law at a sufficiency hearing.

Admissibility of Prosecution Statements

23. **Clause 18** of the Bill would amend **Section 21** of the Act to exclude children under fourteen (14) years of age from making a sworn statement. It would also require a qualified person to assist the Court to determine whether such a child has sufficient intelligence to justify the reception of his statement as evidence and whether the child understands the duty of speaking the truth and the consequences of not speaking the truth.
24. **Clause 18** also establishes guidelines when a statement is made by a person who does not speak English [Clause 18 (c) and (d)].

Further Evidence

25. **Clause 19** of the Bill repeals and replaces **Section 22** of the Act and would provide for the filing of further evidence at a sufficiency hearing by the prosecutor or the accused.

Prima Facie Case

26. **Clause 20** of the Bill seeks to repeal and replace **Section 23** of the Act which establishes the requirement for a *prima facie* case to be made out and proposes to address the issue of the final decision on sufficiency hearing.
27. It would provide for the orders which a Master may make at a sufficiency hearing after reviewing the evidence and considering any submissions. A Master would be able to order that an accused be discharged or put on trial and to make other orders in relation to the case, the charge or the accused.

Discharge of Accused and Order to put on Trial

28. **Clauses 21 and 22** of the Bill would amend **Sections 24(1) and 25** of the Act, respectively, to remove the requirement for a *prima facie* case to be made out before an accused is put on trial for an indictable offence. As such, a Master would only be required to find that there is sufficient evidence to put the accused on trial.

Use of Certified Copy of Statements, Fresh Evidence and DPP to refer case to be tried summarily

29. **Clause 23** seeks to amend the Act by inserting **new Sections 26A to 26C**, which would provide for:
- the use of certified copies of statements where the original is lost or destroyed;
 - the giving of fresh evidence at the trial of an indictable offence; and
 - the power of the Director of Public Prosecutions to refer a case to a Magistrate for summary trial.

Discretion of the DPP to Prefer an Indictment

30. **Clause 24** of the Bill proposes to amend **Section 27(3)** of the Act to give the Director of Public Prosecutions (DPP) the option to request a sufficiency hearing in certain circumstances after an indictment is filed.
31. Additionally, it also seeks to introduce new paragraphs *(ba)* and *(bb)* which would allow the DPP to be able to exercise this option where the accused is charged with an offence involving serious or complex fraud, where a Magistrate was unable to complete a preliminary enquiry before the coming into force of the Act or where a Master is unable to complete a sufficiency hearing.

Accused admitting guilt at Sufficiency Hearing

32. **Clause 25** of the Bill proposes to amend Section 28(1) of the Act which would require a Master to ask an accused who pleads guilty if he would like witnesses to appear to give evidence at the trial and to inform him that he would be committed for sentence immediately if he does not require witnesses to appear at the trial.
33. As a result of this amendment, it would not be mandatory to commit an accused for sentence as soon as he pleads guilty.

New Sections 28A to 28E inserted

Recording answer of Accused – Sec. 28A

Bail on Committal for Trial – Sec. 28B

Apprehension of Accused on Bail but about to Abscond – Sec. 28C

Power to revoke or require higher bail – Sec. 28D

Place of Commitment - Sec. 28E

34. **Clause 26** of the Bill would amend the Act by inserting new **Sections 28A to 28E**:
- **New Section 28A** would provide for the procedure to be followed where an accused pleads guilty and does not require witnesses to appear at the trial;
 - **New Section 28B** would address the taking of recognisances where an accused who is committed for trial or sentencing is granted bail;
 - **New Section 28C** provides for the apprehension of an accused who is likely to abscond after he is committed for trial or sentencing and granted bail;
 - **New Section 28D** provide for revoking or increasing bail and **new Section 28E** would empower the Commissioner of Prisons to determine the prison in which an accused is to be incarcerated.

Binding Over Witnesses to Attend Trial

35. **Clause 27** of the Bill proposes to amend **Section 30** of the Act which seeks to repeal subsection (7) of the Act and insert a new subsection (7).
36. The proposed subsection (7) establishes that the DPP must give notice to the Registrar of the names of the witnesses whom the DPP desires to attend at the trial of an accused at the High Court, at least fourteen (14) days before the date fixed for trial.
37. Additionally, this Clause would also insert new subsections (8), (9) and (10) which would provide for:
- the issuing of *subpoenas* for witnesses for the prosecution;

- the defence to attend a trial; and
- the provision by the Registrar to the accused of copies of the statements, documentary exhibits and lists of exhibits relating to the sufficiency hearing.

Restriction on Publication of Report of Sufficiency Hearing

38. **Clause 28** of the Bill proposes to amend **Section 31(1)** of the Act to allow for the Court's discretion in relation to the publication of information relating to a sufficiency hearing.
39. Additionally, the publication of the name, image, address and occupation of an adult who is charged with a sexual offence, and of any submissions and rulings on points of law, would be permitted.

Schedules

40. **Clause 29** of the Bill would renumber Schedule 1 as Schedule 1A and insert a new Schedule 1 which would contain certain forms. The forms include:
- Report of a Master in Respect of a Search Warrant Issued Under the Administration of Justice (Indictable Proceedings) Act, 2011 [Form 1];
 - Return of Photographer [Form 2]
 - Return of Witness Taking of Photographs [Form 3]
 - Complaint without/upon oath Indictable Offence [Form 4]
 - Summons to Accused on Complaint [Form 5]
 - Warrant Remanding a Prisoner [Form 6]
41. **Clause 30** of the Bill would insert Schedule 4A which would contain the form entitled "*Recognisance of Bail on Committal*".

REFERENCES

Key Legislation

- **Administration of Justice (Indictable Proceedings) Act No. 20 of 2011**
<http://www.ttparliament.org/legislations/a2011-20.pdf>
- **The Summary Courts Act, Chap. 4:20**
<http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical List/lawspdfs/4.20.pdf>
- **The Interpreters Act, Chap. 6:54**

http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/6.54.pdf

- **The Prisons Act, Chap. 13:01**
http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/13.01.pdf
- **The Criminal Procedure Act, Chap. 12:02**
http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/12.02.pdf
- **The Children Act, Chap. 46:01**
http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/46.01.pdf
- **The Supreme Court of Judicature Act, Chap. 4:01**
http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/4.01.pdf
- **The Bail Act, Chap. 4:60**
http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/4.60.pdf



Legal Unit
Parliament Secretariat
Parliament of the Republic of Trinidad and Tobago
Level 3, Tower D,
Port of Spain International Waterfront Centre
#1A Wrightson Road, Port of Spain

January 7, 2019

Disclaimer: Bills Essentials are prepared to support the work of the Members of the Parliament of the Trinidad and Tobago and is not intended to address the specific circumstances of any particular individual. They are produced under time and resource constraints and aim to be available in time for debate in the Houses. The views expressed in Bill Essentials do not reflect an official position of the Legal Unit, nor do they constitute professional legal opinion.

Bill Essentials reflect the relevant legislation as introduced and do not canvass subsequent amendments or developments. To determine the official status of the Bill or follow its progress click here:
<http://www.ttparliament.org/publications.php?mid=28&id=814>