

AS AMENDED IN THE HOUSE OF REPRESENTATIVES

THE INDICTABLE OFFENCES (COMMITTAL PROCEEDINGS) BILL, 2014

EXPLANATORY NOTES

*(These notes form no part of the Bill but are intended
only to indicate its general purport)*

The Bill seeks to repeal the Indictable Offences (Preliminary Enquiry) Act Chap.12:01 and the Administration of Justice (Indictable Proceedings) Act, No. 20 of 2011 and replace them with new legislation to govern indictable offences.

The Bill will contain six parts and fifty clauses.

Part I of the Bill would comprise preliminary clauses and contains five clauses.

Clause 1 of the Bill is the short title of the Act for which this is the Bill.

Clause 2 of the Bill would provide that the Act would come into effect on such date as proclaimed by the President.

Clause 3 of the Bill would provide for the interpretation of certain words and phrases used in the Bill.

Clause 4 of the Bill would provide that Justices would exercise concurrent jurisdiction with Magistrates to issue search warrants under the Act, receive complaints, issue summons or warrants, grant bail, remand accused persons to custody and administer oaths. The clause goes on to require that an endorsement should be put on a warrant issued by a Magistrate in respect of

search warrants, summons and warrants directing that the person arrested, or thing seized be brought before a Magistrate.

Clause 5 of the Bill would empower a Magistrate to issue a summons or warrant to compel any person to appear before him, where the person is accused of committing an indictable offence.

Part II of the Bill would contain clauses 6 to 13 which provide for search warrants, summons and warrants.

Clause 6 of the Bill would empower a Magistrate to issue a warrant where he is satisfied by proof on oath and that there are reasonable grounds for believing that there is in any building, ship, vessel, vehicle, box, receptacle or place, anything upon or in respect of which an indictable offence has been or is suspected to have been committed or which would provide evidence of such commission or future commission. The warrant issued under this subclause would empower a constable to search the above-mentioned places or things identified in the warrant, to seize such things and carry it before a Magistrate. The clause goes on to allow the warrant to be issued and executed on any day and at any time. The clause would also provide that any thing seized while executing a warrant is to be brought before a Magistrate. The preservation of the thing seized and brought before the Magistrate is also provided for in this clause until the conclusion of Committal Proceedings. Provision is made for restoration to the owner of things seized by the Magistrate and where forged bank notes, papers or instruments are brought before the Magistrate, if the person is not committed for trial, for the destruction of such items. Where the search involves explosives or dangerous noxious substances, the provisions provide for the protection of the person authorized to do the search and the disposal thereof. Finally, the clause allows the Constable who is executing a warrant under the clause to seize and retain anything likely to be of substantial

value to the investigation for the purposes of the warrant issued. This, however, does not include items which are subject to legal privilege.

Clause 7 of the Bill would empower a Magistrate or Justice, where he is satisfied that a case is made out, to issue a summons or warrant where a complaint is made in writing that an indictable offence has been committed by any person, the clause does not require an oath to be taken.

Clause 8 of the Bill would provide that where a complaint is made in writing and upon oath to a Magistrate, the Magistrate may, in the first instance, issue a warrant for the apprehension of the person, which may be issued and executed on any day and at anytime. The clause sets out the considerations of the Magistrate in issuing the warrant. The considerations include the nature and seriousness of the offences if there is a likelihood that the accused would not allow himself to be served with a summons, the character, antecedents, associations and social ties of the accused and any other thing the Magistrate may determine relevant. The clause goes on to further empower the Magistrate where a summons has been issued to also issue a warrant. Where the accused is willfully avoiding service of a summons, the clause provides for a warrant to be issued.

Clause 9 of the Bill provides for the issue, content and service of summons. It first empowers a Magistrate to issue a summons even though the complaint in writing may not be upon oath. The clause requires the summons to be directed to the accused person requiring him to appear at a certain time and place and is not to be signed in blank.

Provision is made as to what would constitute service and once served, for the constable executing such service to attend at the same time indicated in the summons to prove service. Provision is also made however, for such proof to be accepted by way of affidavit.

Clause 10 of the Bill would provide that a Magistrate, upon issuing a warrant, may include directions on such warrant. This does not apply however to offences referred to in Part I of the First Schedule of the Bail Act, Chap. 4:06. The directions for bail that may be endorsed on the warrant are in relation to the duty to appear and the time for such appearance and the amount in which any surety is to be bound. The clause also provides that where a warrant is endorsed for bail, the person in respect of such warrant, upon being taken to a police station or upon arrest under the warrant, may be released from custody in accordance with the endorsement.

Clause 11 of the Bill requires a person apprehended upon a warrant to be brought before a Magistrate for committal proceedings to begin or for the postponement of committal proceedings to a future date. The clause empowers the Magistrate to grant the person arrested bail or commit him to prison.

Clause 12 of the Bill would provide that notwithstanding there exists any irregularity, illegality, defect in the substance or form of the complaint, summons or warrant, any variance between the charge contained in the summons or warrant and the charge contained in the complaint or between any of those things and the evidence adduced on the part of the prosecution, the validity of any proceedings at or subsequent to the hearing shall not be affected.

The clause also provides for the conduct of committal proceedings even where there is any irregularity, illegality, defect or error in the summons or warrant or the issue, service or execution of the same or any defect in the complaint or irregularity or illegality in the arrest or custody of the accused. However, where the Magistrate is of the view that the irregularity or defect can produce the effect of deceiving or misleading the accused, he may make amendments and adjourn further hearing of the case.

Clause 13 of the Bill would provide that an accused who is not released on bail be remanded in custody to prison. The accused should not however be

so remanded unless a complaint on oath was taken or a warrant was issued under proposed section 8. The remand would be by way of warrant and the form of the warrant is set out in Schedule 2. The clause goes on to empower the Magistrate to extend the period of remand for twenty-eight days where the accused at the time of the adjournment of the matter is unable to appear before the court due to illness or accident.

Part III of the Bill would contain clauses 14 to 22 and would provide for committal proceedings.

Clause 14 of the Bill would provide that where a person is charged for an offence which is not triable summarily, committal proceedings are required to be held in the manner provided in the section. All committal proceedings are to be commenced on the filing and the tendering into evidence by the prosecutor in the Magistrate's Court of witness statements in support of the charge, a copy of all documentary exhibits and a list of exhibits, if any, which the prosecutor intends to produce. Documents filed under this section are required to be served on the accused or his legal representatives.

Clause 15 of the Bill would provide that the accused once served documents under section 14, may in reply, file a statement of any evidence he wishes to give on his own behalf at his trial, any witness statements, any documentary exhibits and a list of exhibits he intends to produce. The failure of the accused to file any documents within the time specified by the Magistrate or the lack of any such documents does not affect the Magistrate's power to proceed with and conclude committal proceedings. Once documents are filed by the accused the Magistrate is required to serve them on the prosecutor. The clause also requires that where the accused is legally represented his legal representative is required to serve a copy of any reply filed on the prosecutor.

Clause 16 of the Bill empowers the Magistrate, simply on the consideration of all documents filed by both the prosecutor and the accused, to put the accused on trial for an indictable offence.

Clause 17 of the Bill would require the Magistrate, where an application is made either by the prosecution or the accused person by way of a submission orally or in writing, to give either side the opportunity to show cause why the committal order should not be made.

Clause 18 of the Bill empowers the Magistrate to adjourn committal proceedings and further empowers him to grant bail to the accused or remand him into custody for a period no longer than twenty-eight clear days. The period of remand may be further extended where the accused, by reason of illness or accident or other sufficient cause is unable to appear personally before the Magistrate.

Clause 19 of the Bill would allow for statements filed under proposed sections 14 and 15 to be admitted as evidence as if oral evidence had been given by the person, where the statements are signed by the person who made them and where the statements contain a declaration by that person that the statements are true to the best of his knowledge and belief and that he made the statements knowing that if it were tendered in evidence he would be liable to prosecution if he willingly stated in them anything which he knew to be false or did not believe to be true and finally, except in relation to a child under the age of fourteen years the statement was sworn before a Justice of the Peace and signed by him. The clause also provides that where the Magistrate is of the opinion that a part of the statement is inadmissible there is required to be written against the inadmissible part the words “treated as inadmissible” and the Magistrate would append his signature thereto. Provision is also made where it is not possible to write the words “treated as inadmissible” on the document that it may be written on a label or some other mark of identification

The clause would provide that statements made by children under the age of 14 are to be supported by statements from either a probation officer, child psychiatrist or any other person qualified to make an assessment of the child. The assessment should be to the effect that the child is possessed of sufficient intelligence to justify the reception of his statement as evidence and understands the duty of speaking the truth.

The clause would also provide that where the statement is to be taken from a person under eighteen years, it is required to be recorded in the presence of an adult of his choice. Where the statement is to be made by a person who is unable to read, or a person who is unable to write, the clause requires the statement to be read aloud or otherwise effectively communicated to the person before he signs it and must be accompanied by a declaration that states that it has been read aloud to him or effectively communicated to him and he has signed or made his mark thereon. Where the statement is to be made by a person who does not speak English, the clause provides for the translation and recording of the statement and requires the statement be read back aloud and translated to him before he signs or makes his mark on it. Where further documents are filed under this section they are required to be not only served on the other party but also they are to be treated in like manner as original documents filed.

The clause goes on to provide that evidence admitted in a statement is required to be read aloud at the Committal Proceedings unless the Magistrate otherwise directs.

Clause 20 of the Bill would provide for the marking of all exhibits and the delivery of documentary exhibits into the custody of the Clerk of the Peace. All other exhibits are to be taken charge of by the police.

Clause 21 of the Bill would require a person who intends to rely on an alibi as defence to the charge, to file a notice of alibi at the commencement of Committal Proceedings after documents have been served on him by the prosecutor. The clause requires a person adducing evidence of alibi on trial on indictment to first give Notice, if not he s required to first obtain leave of the Court. The clause goes on to define what is meant by “evidence in support of an alibi” and sets out the requirements of the Notice.

Clause 22 of the Bill would provide that further documents may be filed on the application to the Magistrate by either party.

Clause 23 of the Bill would require all statements filed, documentary exhibits and list of exhibits admitted as evidence to be signed and stamped by the presiding Magistrate.

Part IV of the Bill contains clause 24 to 28 and provide for discharge and committal.

Clause 24 of the Bill would require a Magistrate at the conclusion of the tendering of all evidence and the hearing of any submissions, if any, to make an Order either committing the accused to trial by the High Court, discharging the accused and making an order for his release or any other order in relation to the case, the charge or the accused.

Under clause 25 where the Magistrate make an order committing the accused person for trial by jury, he is empowered to either commit him to prison to be delivered in due course for the trial or commit him to trial on bail. The clause goes on to provide for the circumstances in which the bail granted is conditioned on the accused providing surety. For the avoidance of doubt the clause makes it clear that the section is not to be construed as preventing a

Magistrate from granting bail to the accused person where the offence is of a bailable nature.

Clause 26 of the Bill would set out the procedure to be followed in respect of the committal of an accused person for trial on the application of the Director of Public Prosecution to a judge of the High Court after the accused had been discharged earlier by the Magistrate during committal proceedings. The clause also requires that the leave of the Judge is required for any request or application made outside of the time specified. The clause also makes provision for where the accused had been discharged, the Director of Public Prosecutions is empowered to refer the case back to the Magistrate with directions to re-open the committal proceedings.

Clause 27 of the Bill would empower the Director of Public Prosecutions to prefer an indictment whether or not committal proceedings have taken place in five instances. Firstly, at the close of an inquest, where the Coroner is of the opinion that sufficient grounds exists for making a charge on indictment against the person. Secondly, where a co-accused is arrested after the co-defender has already been committed to stand trial and it is intended to join them in the same indictment. Thirdly, where a person is charged with serious or complex fraud. Fourthly where the evidence filed disclose a *prima facie* case but the Magistrate is unable to complete the proceedings for a number of specified reasons and finally, in cases of offences of a violent or sexual nature or where there is a child witness or an adult witness who has been subjected to threats, intimidation or elimination.

Clause 28 of the Bill would allow the State to appeal to the Court of Appeal, the decision of the court in relation to-

- (a) the committal for trial by a High Court Judge; or
- (b) the application of the Director of Public Prosecutions.

Part V of the Bill would contain clauses 29 to 45 and provide for proceedings after committal.

Clause 29 of the Bill would require a Magistrate, no later than three months from the conclusion of committal proceedings, to transmit the complaint, the statements of witnesses, of both the prosecution and defence, documentary exhibits, lists of exhibits and statements of the accused, to the Director of Public Prosecutions. The Director of Public Prosecutions is required to keep such documents until the indictment and then transmit them to the Registrar of the Supreme Court for production at trial. The clause goes on to provide that the person committed for trial may be indicted not only for the offence for which he was committed for trial, but for any offence which was disclosed by the evidence in the committal proceedings.

The clause requires the Director of Public Prosecutions to file the documents within nine months of their receipt. Where there has been a procedural deficit during the course of the committal proceedings a Judge of the High Court or the Court of Appeal may direct the Director of Public Prosecutions to prefer an indictment. Where this is done, the clause provides that the Criminal Procedure Act, Chap. 12:02 would apply. Provision is also made for an application to be made to a Judge to prefer an indictment pursuant to subclause (5) where the proceedings have been completed and subsequently a procedural defect is discovered which would render the proceedings null and void.

Clause 30 of the Bill would set out the requirements where written statements, documentary exhibits to the statements or the warrant of committal is lost or destroyed. The clause allows secondary evidence of the contents of the documents to be admitted into evidence. The loss or destruction must however be proved.

Clause 31 of the Bill would provide that in the circumstances under section 29 where statements, etc., are lost or destroyed, that a copy of the statement or part thereof or of the document certified by the Clerk of the Peace shall be regarded as the original statement or document.

Clause 32 of the Bill would allow additional evidence of a material nature to be given as fresh evidence in a trial upon Notice being served on the Court.

Clause 33 of the Bill would provide for where the DPP is of the opinion that the accused should not have been committed for trial in the High Court but should have been dealt with summarily. The clause empowers the Director of Public Prosecutions to give directions in relation to the matter as he thinks fit and requires those directions to not only be in writing but also be signed by the Director of Public Prosecutions. The clause goes on to provide for the procedure to be followed where the accused person is in custody or out on bail. Provision is made for the proceedings to continue under the Summary Courts Act, Chap. 4:20 in the same manner as if the Magistrate had formed an opinion in terms of section 94 of that Act.

Clause 34 of the Bill would provide for the circumstances where the accused admits guilt at the committal proceedings and provides the procedure to be followed.

Clause 35 of the Bill would provide for where the accused upon admitting guilt and being asked if he wishes the witnesses to appear to give evidence against him responds in the negative.

Clause 36 of the Bill would set out the procedure in respect of the grant of bail to an accused committed for trial.

Clause 37 of the Bill would set out the procedure for the conveyance of the accused person to prison after his committal for trial.

Clause 38 of the Bill would provide for the grant of bail to a person committed to prison to await trial after his commitment to prison, where he was not granted bail simply on the grounds, that at the time of his commitment he was unable to procure a sufficient surety.

Clause 39 of the Bill would allow an accused person to petition a Judge of the High Court for the grant of bail.

Clause 40 of the Bill would set out the requirements to be followed in relation to an accused person who was granted bail and subsequently there is information that he is about to abscond for the purpose of evading justice.

Clause 41 of the Bill would empower a Magistrate to revoke bail granted to an accused where he is subsequently indicted for an offence which is not bailable. The clause also empowers a Judge or Magistrate to require higher bail be obtained.

Clause 42 of the Bill empowers the Commissioner of Prisons to determine which prison a person committed under the Act should be placed in.

Clause 43 of the Bill would require the Director of Public Prosecutions to give the Registrar of the Supreme Court notice of the names of all witnesses he wants to attend at the High Court. The Registrar would be required upon receipt of the notice to *subpoena* the witness. The clause also permits the accused person to give notice to the Registrar of the witnesses he desires to attend at trial and they too shall be subpoenaed by the Registrar. The clause also makes provision for copies of statements, documentary exhibits and list of exhibits to be given to person committed for trial by the Registrar.

Clause 44 of the Bill would allow for the admissibility of written statements which were admitted during the committal proceedings to be admitted at the trial in certain circumstances.

Clause 45 of the Bill would provide for the restriction on publication or reporting of committal proceedings. Breach of this provision would attract a penalty of ten thousand dollars and imprisonment for six months.

Part VI of the Bill would contain clauses 46 to 50 and comprises miscellaneous provisions.

Clause 46 of the Bill would provide that Part VI of the Summary Courts Act, Chap. 4:20 would continue to apply to the summary trial of certain indictable offences.

Clause 47 of the Bill would provide for the making of Rules for the Court by the Rules Committee.

Clause 48 of the Bill would repeal the Indictable Offences (Preliminary Enquiry) Act, Chap. 12:01 and the Administration of Justice (Indictable Proceedings) Act, No. 20 of 2012.

Clause 49 of the Bill would contain transitional provisions in respect of the continued application of Indictable Offences (Preliminary Enquiry) Act, Chap. 12:01 to preliminary enquiries before the Magistrates' Court on coming into force of the Act and the continued application of section 39 of that Act to trials where the preliminary enquiry was conducted under that Act prior to the commencement of this Act.

Clause 50 would make consequential amendments in relation to references in other written laws and to substantive provisions as contained in Schedule 5 to the Supreme Court of Judicature Act, Chap. 4:01; the Summary Courts Act, Chap. 4:20, the Evidence Act, Chap. 7:02, the Legal Aid and the Advice Act, Chap. 7:07, the Criminal Procedure Act, Chap. 12:02 and the Criminal Procedure (Corporations) Act, Chap. 12:03.

**THE INDICTABLE OFFENCES (COMMITTAL PROCEEDINGS)
BILL, 2014**

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A BILL

An Act relating to committal proceedings in respect of indictable offences by Magistrates and for ancillary matters

ENACTED by the Parliament of Trinidad and Tobago as follows: Enactment

PART I

PRELIMINARY

- 1.** This Act may be cited as the Indictable Offences (Committal Proceedings) Act, 2014. Short title
- 2.** This Act comes into operation on such date as is fixed by the President by Proclamation. Commencement
- 3.** (1) In this Act— Interpretation
- “committal proceedings” means proceedings under Part III for the committal of a person accused of an indictable offence for trial in the High Court;
- “complaint” includes any information or charge relating to an indictable offence;
- “Court” means the High Court or a Judge of the Court;
- “documentary exhibit” includes any device by which information is received or stored;
- “Justice” means a Justice of the Peace;
- “Keeper” has the same meaning assigned to it by section 2 of the Summary Courts Act; Chap. 4:20
- “prison” means any place referred to in section 3 of the Prisons Act or declared or appointed a prison under that Act; Chap. 13:01

“prosecutor” includes the Director of Public Prosecutions or a person acting under and in accordance with his general or special instructions and police prosecutors; and

“summons” means a summons issued by a Magistrate under section 9(1).

(2) For the purposes of this Act and any other written law, a reference to a deposition in any written law or criminal proceedings in relation to a preliminary enquiry or committal proceeding shall be construed as a reference to any statement admitted in evidence in committal proceedings under this Act.

Concurrent
Jurisdiction of
Justices

4. (1) For the purposes of this Act, Justices shall have and exercise concurrent jurisdiction with Magistrates to—

- (a) issue search warrants pursuant to section 6;
- (b) receive complaints;
- (c) issue a warrant or summons pursuant to section 8 or section 9 respectively;
- (d) grant bail in accordance with the Bail Act;
- (e) remand the accused person in custody; and
- (f) administer oaths.

Chap. 4:60

(2) Where a Magistrate issues a warrant pursuant to subsection (1)(a) or (c), he shall endorse the warrant with a direction that the person arrested, or the thing seized, be brought before a Magistrate.

Compelling
appearance of
accused person

5. Any Magistrate may issue a summons or warrant under this Act to compel the appearance before him of any person accused of having committed in any place, whether 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.

PART II
SEARCH WARRANTS, SUMMONS AND WARRANTS

6. (1) A Magistrate who is satisfied by proof on oath that there is reasonable ground for believing that there is in any building, ship, vessel, vehicle, box, receptacle, or place, anything-

Power to issue a search warrant

- (a) upon or in respect of which any indictable offence has been or is suspected to have been committed;
- (b) which there is reasonable ground for believing will afford evidence as to the commission of any such offence; or
- (c) which there is reasonable ground for believing is intended to be used for the purpose of committing any indictable offence against the person,

may at any time issue a warrant under his hand authorizing any constable to search the building, ship, vessel, vehicle, box, receptacle, or place for any such thing, and to seize and carry it before the Magistrate issuing the warrant or some other Magistrate, to be dealt with by him according to law.

(2) A warrant under this section may be issued and executed at any time and on any day including a Saturday, Sunday or public holiday.

(3) Anything seized or detained in the execution of a warrant whether specified in the warrant or not, shall be brought before any Magistrate.

(4) When a thing is seized and brought before any Magistrate, the Magistrate may detain it or cause it to be detained, taking reasonable care that it is preserved until the conclusion of the committal proceedings, and where any person is committed for trial, the Magistrate may order the thing seized to be further detained for the purpose of evidence on the trial.

(5) The Magistrate under subsection (4), in taking reasonable care to preserve the thing until the conclusion of the committal

proceedings shall, where appropriate, cause the item to be detained in the custody of the police or another appropriate body.

(6) Except as provided for under this Act or any other law, where a person is not committed for trial or where the thing under this section does not constitute evidence in any other criminal proceedings, the Magistrate shall direct the thing seized to be restored to the person from whom it was taken unless the Magistrate is authorized or required by law to dispose of it otherwise.

(7) Where, under a warrant, there is brought before any Magistrate any forged bank note, bank note paper, instrument, or other thing, the possession of which, in the absence of lawful excuse, is an indictable offence according to any written law for the time being in force, if there is no commitment for trial, the Magistrate may order the thing to be destroyed.

(8) Where the thing to be searched for is any explosive or dangerous or noxious substance or thing, the person making the search shall have the same powers and protection as are given by any Act for the time being in force to any person lawfully authorized to search for any such thing, and the thing itself shall be disposed of in the manner directed by the Act, or, in default of such direction, as the Commissioner of Police may order.

(9) Where a constable has entered premises in execution of a warrant issued under this section, he may seize and retain any thing, other than items subject to legal privilege, which is likely to be of substantial value, whether by itself or together with other material, to the investigation for the purposes of which the warrant was issued.

(10) The provisions of any written law which provides the procedure for the execution of a search warrant in respect of computer systems shall apply to the execution of a search warrant under this Part.

7. Where a complaint is made in writing, to a Magistrate or Justice, that an indictable offence has been committed by any person whose appearance he has power to compel, the Magistrate or Justice shall consider the allegations of the complainant, and where he is of the opinion that a case for so doing is made out, he shall issue a summons or warrant in accordance with this Act.

Complaint in writing

8. (1) Where a complaint is made in writing and upon oath, a Magistrate may in the first instance, if he is of the opinion that a case for so doing is made out, issue a warrant for the apprehension of the accused person.

Warrant in the first instance

(2) In determining whether to issue a warrant under subsection (1), a Magistrate shall consider-

- (a) the nature and seriousness of the offence;
- (b) the likelihood of the accused person evading service of a summons;
- (c) the character, antecedents, associations and social ties of the accused person; and
- (d) any other factor which appears to be relevant.

(3) A warrant under subsection (1) may be issued and executed at any time and on any day including a Saturday, Sunday or public holiday.

(4) The fact that a summons has been issued shall not prevent any Magistrate from issuing the warrant at any time before or after the time mentioned in the summons for the appearance of the accused person.

(5) Where the service of a summons for the appearance of the accused person is proved and the accused person does not appear, or where it appears that the accused person is willfully avoiding service, the warrant may be issued.

(6) The Magistrate may issue the warrant under subsections (3) or (4) upon oath being made on behalf of the complainant substantiating the matter of the complaint to the satisfaction of the Magistrate to apprehend the person so summoned or avoiding service to answer the complaint.

Schedule 1 (7) A complaint under subsection (1) shall be in the form set out as Form A in Schedule 1.

Issue, contents and service of summons

9. (1) A Magistrate may issue a summons although the complaint in writing is not upon oath.

(2) A summons shall –

- (a) be directed to the accused person and shall require him to appear at a certain time and place to be mentioned in the summons; and
- (b) not be signed in blank.

(3) A summons shall be served by a constable upon the accused person, either by delivering it to him personally or if he cannot be found, by leaving it with an adult person for him at his last or most usual place of abode.

(4) The constable who served a summons under subsection (3) shall attend at the time and place mentioned in the summons for the appearance of the accused person, in order, if necessary, to prove the service.

(5) Notwithstanding subsection (4), a Magistrate before whom the accused person ought to appear may, in his discretion, receive proof of the service by affidavit in the absence of the constable who served the summons under subsection (3), and such affidavit may be made before any Magistrate.

(6) A complaint without oath shall be in the form set out as Form B in Schedule 1.

10. (1) A Magistrate issuing a warrant under this Act for the arrest of any person in respect of any offence other than those offences referred to in Part I of the First Schedule of the Bail Act may, subject to the provisions of the Bail Act, grant him bail endorsing the warrant with a direction in accordance with subsection (2).

Warrant
endorsed on bail

Chap. 4:60

(2) A direction for bail endorsed on a warrant under subsection (1) shall—

- (a) state that the person arrested is to be released on bail subject to a duty to appear before the Court and at the time as may be specified in the endorsement; and
- (b) fix the amount in which any surety is to be bound.

(3) Where a warrant has been endorsed for bail under subsection (1), then, on the person referred to in the warrant being taken to a police station on arrest under the warrant, the officer in charge of the police station may release him from custody in accordance with the endorsement.

11. When any person is apprehended upon a warrant, he shall be brought before a Magistrate as soon as practicable after he is arrested, and the Magistrate shall either proceed with the committal proceedings or postpone the committal proceedings to a future date in which latter case the Magistrate may grant the person arrested bail, or commit him to prison according to the provisions hereinafter contained.

Disposal of
person
apprehended
upon warrant

12. (1) No irregularity or defect in the substance or form of the complaint, summons, or warrant, and no variance between the charge contained in the summons or warrant and the charge contained in the complaint, or between any of them and the evidence adduced on the part of the prosecution at the committal proceedings

Irregularity in
summons,
warrant, service
or arrest

produced in support thereof, shall affect the validity of any proceeding at, or subsequent to, the hearing.

(2) Where any accused person is before a Magistrate, whether voluntarily or upon summons, or after being apprehended with or without warrant, or while in custody for the same or any other offence, the committal proceedings may be held notwithstanding any -

- (a) irregularity, illegality, defect or error in the summons or warrant, or the issuing, service or execution of the same; or
- (b) defect in the complaint, or any irregularity or illegality in the arrest or custody of the accused person.

(3) Where a Magistrate is of the view that any irregularity, illegality or defect mentioned in this section is such that the accused person has been thereby deceived or misled, he may make any necessary amendments, and, if it is expedient to do so, adjourn, upon such terms as he may think fit, the further hearing of the case.

Remand of
accused person

13. (1) An accused person who is not released on bail shall be remanded in custody to a prison.

(2) An accused person shall not be remanded unless a complaint on oath was taken or a warrant was issued under section 8.

(3) Where an accused person is remanded, the remand shall be by warrant in the form set out in Schedule 2.

Schedule 2

(4) Where a Magistrate is satisfied that an accused person who has been remanded is, by reason of illness, **accident or other sufficient cause**, unable to appear before the Court at the adjournment pursuant to section 18, the Magistrate may, in the absence of the accused person, order him to be further remanded for no longer than twenty-eight days.

PART III
COMMITTAL PROCEEDINGS

14. (1) Wherever any charge has been brought against any person for an offence which is not to be tried summarily, committal proceedings shall be held as hereinafter provided.

Committal
proceedings

(2) Committal proceedings shall be commenced by the filing and tendering into evidence by the prosecutor in the Magistrates' Court of -

- (a) one or more statements of witnesses in support of the charge;
- (b) a copy of any documentary exhibit; and
- (c) a list of exhibits, if there are any exhibits which the prosecutor intends to produce in connection with the proceedings.

(3) The prosecutor shall, without delay, cause copies of the statements, documentary exhibits and the list of exhibits filed under subsection (2) to be served on the accused person or his legal representative.

(4) In this Part any statement filed shall be in writing.

15. (1) Where the accused has been served in accordance with section 14(3) he may in reply, within such period as may be specified by the Magistrate, file -

Accused person
may file
statements and
exhibits in reply

- (a) a statement of any evidence that he wishes to give on his own behalf at his trial;
- (b) any statement of his witnesses;
- (c) a copy of all documentary exhibits and a list of exhibits, if there are any exhibits which the

accused person intends to produce in connection with the proceedings; **and**

(d) a Notice of alibi, if any, in accordance with section 21.

(2) Failure by the accused person to file any statement, documentary exhibits or a list of exhibits within the time specified by the Magistrate shall not affect the power of the Magistrate to proceed with and conclude the committal proceedings or to take any other action permitted by this Act.

(3) The Magistrate shall, without delay, cause a copy of any reply filed under subsection (1) to be served on the prosecutor.

(4) Notwithstanding subsection (3), where the accused person is legally represented, his legal representative shall, without delay, serve a copy of any reply filed under subsection (1) on the prosecutor.

Committal on written evidence and documentary exhibits only

16. A Magistrate holding committal proceedings may commit an accused person for trial before the High Court on a charge for an indictable offence where he is of the opinion, on consideration of all the evidence filed under section 14(2) alone or in conjunction with any evidence filed under section 15(1), that there is sufficient evidence to put the accused person on trial for any indictable offence.

Opportunity to show cause why order should not be made

17. Before making an order under section 24, the Magistrate shall, on the application of either side and by way of submission orally or in writing, give the prosecutor or the accused person, as the case may be, an opportunity to show cause why the order should not be made.

Adjournment

18. (1) A Magistrate may adjourn committal proceedings in the interest of justice and the adjournment shall be made to a certain date and place.

(2) Upon an adjournment under this section, the Magistrate may grant bail to the accused person or remand him to custody.

(3) Unless the person remanded and the prosecutor consents, an adjournment shall not be for longer than twenty-eight clear days.

(4) Where a Magistrate is satisfied that an accused person who has been remanded is, by reason of illness, accident or other sufficient cause, unable to appear personally before the Magistrate on the adjourned date, the Magistrate may, in the absence of the accused person, order him to be further remanded for such time as may be considered reasonable.

19. (1) In committal proceedings, a statement by any person filed under sections 14 and 15 shall, if the conditions in subsection (2) are satisfied, be admissible as evidence to the like effect as if oral evidence had been given by the person.

Admissibility of statements in committal proceedings

(2) The following conditions shall be satisfied for a statement to be admissible under subsection (1):

- (a) the statement purports to be signed by the person who made it;
- (b) except in the case of a child under fourteen years of age, the statement was sworn before a Justice of the Peace and is authenticated by a Certificate and signed by him; and
- (c) 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

willingly stated in it anything which he knew to be false or did not believe to be true.

(3) Where a statement is made by a person under eighteen years of age it shall-

- (a) be recorded in the presence of an adult of his choice; and
- (b) state his age and that an adult of his choice was present with him when it was made.

Chap. 46:01

(4) Notwithstanding section 19 of the Children Act, where a statement is made by a child under fourteen years of age, such statement shall be supported by a statement from a probation officer, child psychiatrist or any other person qualified to make an assessment of the child **to assist the Court to determine whether** the child is possessed of sufficient intelligence to justify the reception of his statement as evidence and understands the duty of speaking the truth.

(5) Where a statement is made by a person who cannot read, the statement shall be –

- (a) recorded on his behalf and read aloud to him or otherwise effectively communicated to him before he signs it or makes his mark thereon; and
- (b) accompanied by a declaration that states that it has been read aloud to him or effectively communicated to him and he has signed or made his mark thereon.

(6) Where a statement is made by a person who cannot write, the statement shall be-

- (a) recorded on his behalf and read aloud to him or otherwise effectively communicated to him before he signs it or makes his mark thereon; and
- (b) accompanied by a declaration that states that it has been read aloud and translated to him and he has signed or made his mark thereon.

(7) Where a statement is made by a person who does not speak English his statement shall be taken through an interpreter and shall be –

- (a) recorded on his behalf, read aloud and translated to him in English before he signs it or makes his mark thereon; and
- (b) accompanied by a declaration that states that it has been read aloud and translated to him and he has signed or made his mark thereon.

(8) Any document or object referred to as an exhibit and identified in a statement tendered in evidence under sections 14 and 15 shall be treated as if it had been produced as an exhibit and identified in Court by the maker of the statement.

20. (1) The exhibits which are produced to the Magistrate by- Exhibits to be marked and delivered

- (a) the prosecutor pursuant to section 14(2)(b); or
- (b) the accused person pursuant to section 15(1),

shall, at the hearing of the committal proceedings, be duly marked.

(2) Documentary exhibits shall be delivered into the custody of the Clerk of the Peace, who shall retain them in safe custody under the direction of the Magistrate, unless the Magistrate otherwise directs.

(3) All other exhibits other than those referred to in subsection (2) shall **on the direction of the Magistrate be taken charge of by the police or another appropriate body and shall be produced by them or it at trial.**

21. (1) Where an accused person intends to rely on an alibi in his defence to the charge, he is required, in addition to any statements he may file under section 15, to file a notice of alibi at the Notice of alibi

commencement of committal proceedings after he has been served documents by the prosecutor.

(2) On trial on indictment , the accused person shall not, without leave of the Court, adduce evidence in support of an alibi, unless he has given notice as required under subsection (1);

(3) 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 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.

(4) The notice shall include the name and address of any witness in support of the alibi or if the name or address is not known to the accused person at the time at which he gives notice, any information in his possession which might be of material assistance in finding the witness.

Further
evidence

22. (1) A Magistrate, on application by the prosecutor or the accused person, may permit either of them to file further evidence within such period as may be specified by the Magistrate.

(2) Further evidence filed under subsection (1), shall be—

- (a) served on the other party; and
- (b) treated in the same manner as documents originally filed under sections 14(2) and 15(1).

Statements,
documentary
exhibits and list
of exhibits to be
signed and
stamped

23. All statements filed, documentary exhibits and the list of exhibits admitted as evidence shall be signed and stamped by the Magistrate presiding over the committal proceedings

PART IV
DISCHARGE AND COMMITTAL

24. At the conclusion of the tendering of all evidence and the hearing of any submissions, if any, under Part III, the Magistrate may make any of the following orders:

Final decision on committal proceedings

- (a) commit the accused person for trial in the High Court;
- (b) discharge the accused person and, if he is in custody, make an order for his release; or
- (c) make any other order in relation to the case, the charge or the accused person as provided for in this Act or under any other written law.

25. (1) Where the Magistrate makes an order under section 24(a), he may commit the accused person for trial -

Committal for trial in custody or on bail

- (a) in custody, that is to say, by committing him to prison there to be safely kept until delivered in due course of law; or
- (b) on bail in accordance with the provisions of the Bail Act and direct him to appear before the High Court for trial.

(2) Where the release of the accused person on bail under subsection (1)(b) is conditioned on his providing a surety and, in accordance with section 16 of the Bail Act, the Magistrate fixes the amount in which the surety is to be bound with a view to his entering into his recognizance subsequently, the Magistrate shall, in the meantime commit the accused person to custody in accordance with subsection (1)(a).

(3) A commitment under this section shall be in the form set out in Schedule 3.

Schedule 3

(4) Nothing in this section shall be construed as preventing a Magistrate from granting bail to the accused person where the offence charged is of a bailable nature.

Committal of
discharged
accused person

26. (1) In every case in which a Magistrate discharges an accused person at committal proceedings, he shall, if required to do so by the Director of Public Prosecutions, transmit forthwith to him the record of the proceedings, and if the Director of Public Prosecutions, on perusing and considering the evidence, is of the opinion that the accused person ought not to have been discharged, he may apply to a Judge of the High Court for a warrant for the arrest and committal for trial of the accused person.

(2) Where the Judge under subsection (1) is of the opinion that the evidence, as given before the Magistrate, was sufficient to put the accused person on trial, he may issue a warrant for the arrest of the accused person and for his committal to prison for trial, there to be kept until discharged in due course of law or granted bail, and every person so proceeded against shall be further prosecuted in the like manner as if he had been committed for trial by the Magistrate by whom he was discharged.

(3) A request to the Magistrate by the Director of Public Prosecutions for the record of the proceedings under subsection (1) shall be made within twenty-one days of the discharge of the accused person and the application to the Judge for the warrant for arrest and committal for trial of the accused person shall be made within three months after the record of the proceedings has been obtained by the Director of Public Prosecutions.

(4) Leave of the Judge shall be required for any request or application made outside of the time specified in subsection (3).

(5) Where an accused person has been discharged under section 24 and additional evidence of a material nature in support of the offence becomes available, the Director of Public Prosecutions may refer the case back to the Magistrate with directions to re-open the committal proceedings for the purpose of taking further evidence, and with such other directions as he may think proper.

(6) The “additional evidence” referred to in subsection (5) and section 32 includes evidence not given at the committal proceedings through non-availability or inadvertence.

27. Notwithstanding anything in this Part or Part III, the Director of Public Prosecutions may prefer an indictment whether or not committal proceedings have been conducted in the following instances:

DPP may prefer indictment without committal proceedings in certain circumstances

- (a) where, at the close of an inquest, a Coroner is of the opinion that sufficient grounds are disclosed for making a charge on indictment against any person pursuant to section 28 of the Coroners Act;
- (b) where a co-accused is arrested after the co-offender has already been committed to stand trial and it is desired to join them both in the same indictment;
- (c) where a person is charged with **an offence involving** serious or complex fraud;
- (d) where the evidence filed before the Magistrate discloses a *prima facie* case but the Magistrate is unable to complete the committal proceedings because of his-
 - (i) physical or mental infirmity;
 - (ii) resignation;
 - (iii) retirement; or
 - (iv) death; or
- (e) in respect of offences of a violent or sexual nature and where there is a child witness, or an adult witness who has been subjected to threats, intimidation or elimination.

Chap. 6:04

28. An appeal by the State from a decision of the Court under section 26(2) shall lie as of right to the Court of Appeal.

Appeal

PART V

PROCEEDINGS AFTER COMMITTAL

29. (1) After the committal proceedings have been concluded and the warrant of commitment for trial has been issued, the Magistrate shall, no later than three months from the conclusion

Transmission and custody of documents and exhibits relating to a case

of the committal proceedings, transmit to the Director of Public Prosecutions the complaint, the statements of the witnesses, both for the prosecution and defence, the documentary exhibits and lists of exhibits thereto, the statement, if any, of the accused person and the warrant of commitment for trial.

(2) Subject to this Act, the complaint, statements and other documents and documentary exhibits received from a Magistrate by the Director of Public Prosecutions and referred to in subsection (1), shall be kept by the Director of Public Prosecutions until the indictment, if any, to which they relate is filed, and shall then be transmitted to the Registrar of the Supreme Court, who shall keep them and produce them to the Court at the trial of the accused person.

(3) A person committed for trial may be indicted for any offence for which he was committed for trial or for any offence which, in the opinion of the Director of Public Prosecutions, is disclosed by the evidence filed at the committal proceedings.

(4) Any indictment filed by the Director of Public Prosecutions pursuant to subsections (2) and (3) shall be filed within nine months of the receipt of the documents referred to in subsection (1).

(5) Notwithstanding subsections (1), (2) and (3), an indictment charging any person with an indictable offence may also be preferred by the Director of Public Prosecutions on the direction of, or with the consent of, a Judge of the High Court or the Court of Appeal where any procedural defect has occurred during the course of committal proceedings.

(6) An application may be made to a Judge of the High Court in the first instance to prefer an indictment pursuant to subsection (5), where the committal proceedings have been completed and subsequently a procedural defect is discovered

which would otherwise render the committal proceedings null and void.

(7) In deciding whether to direct or consent to the preferring of an indictment under subsection (5), the Judge of the High Court or Court of Appeal, as the case may be, may consider representations made by the Director of Public Prosecutions and the accused person in that regard.

(8) The Criminal Procedure Act shall apply to an indictment preferred under subsection (4). Chap. 12:02

30. (1) Where, after the committal proceedings into the complaint has been concluded, the original of the complaint, any statement of any witness, any documentary exhibit to the statement, any statement, if any, of the accused person or the warrant of committal, is lost or destroyed, then in all proceedings at trial or at reopened committal proceedings under section 33, secondary evidence of the contents of the document shall be admitted in every case in which the original document would be admissible. Where statements, etc., lost or destroyed

(2) Without prejudice to any other method by which such fact may be proved—

- (a) the fact that any document is lost or destroyed may be proved by the testimony of the officer in whose charge the document was last entrusted; and
- (b) the fact that a document is a copy may be authenticated where the document is a —
 - (i) private document, by any evidence with which secondary evidence as to private documents may be authenticated; and
 - (ii) public document, by a certified copy thereof issued by the officer to whose custody the original was entrusted.

31. Notwithstanding section 30(1) but subject to section 30(2), where the original statement or part thereof, or any document Use of certified copy of statements, etc.

mentioned in that section is lost or destroyed, a copy of the statement or part thereof, or of the document duly certified by the Clerk of the Peace of the magisterial district in which the committal proceedings were held, or by the committing Magistrate, shall be regarded as the original statement or document, as the case may be and dealt with as such for purposes of this Act.

Fresh evidence

32. (1) Where an accused person has been committed for trial for any offence disclosed by the evidence taken at committal proceedings and additional evidence of a material nature in support of the offence becomes available, the new evidence may, with Notice to the Court and the accused person, be given as fresh evidence at the trial.

(2) Reopened committal proceedings shall be held in like manner and with the like consequences as if it were an original committal proceedings.

DPP to refer back case to be dealt with summarily

33. (1) If, after the receipt of the statements and other documents mentioned in sections 29 or 31 the Director of Public Prosecutions is of the opinion that the accused person should not have been committed for trial, but that the case should have been dealt with summarily, the Director of Public Prosecutions may, if he thinks fit, refer the case back to the Magistrate **for re-consideration.**

(2) Where the Director of Public Prosecutions directs that the committal proceedings shall be re-opened or that a case shall be dealt with summarily, the following provisions shall have effect:

- (a) where the accused person is in custody, the Magistrate shall, by an order in writing under his hand, direct the Keeper of the prison having the custody of the accused person to convey him or cause him to be conveyed to the place named in the order for the purpose of being dealt with as he Magistrate may direct; or

- (b) where the accused person is on bail, the Magistrate shall issue a summons for his attendance at a time and place named in the summons; and
- (c) thereafter the proceedings shall be continued under the provisions of this Act or of the Summary Courts Act, as the case may be, and, if under the Summary Courts Act, in the same manner as if the Magistrate had himself formed an opinion in terms of section 94 of that Act.

(3) If the accused person does not attend in obedience to the summons under subsection (2)(b), the Magistrate shall issue a warrant for his apprehension.

Committal
for
sentence

34. In committal proceedings, except when the charge is one of treason or murder, if an accused person who is represented by an Attorney-at-law informs the Magistrate that he is guilty of the charge, the Magistrate -

- (a) shall say to him the following words, or words to the like effect:
 - “ Do you wish the witnesses to appear to give evidence against you at your trial? If you do not, you will now be committed for sentence, instead of being committed for trial.”; and
- (b) may commit him for sentence before the High Court in accordance with section 35(2).

35. (1) Where the accused person, in answer to the question referred to in section 34, states that he does not wish the witnesses to appear to give evidence against him, his statement of guilt and his answer shall be taken down in writing and read to him and shall be signed by the Magistrate, the accused person and his Attorney-at-law and shall be kept with the statements of the witnesses.

Recording
answer of
accused person

(2) In any such case as mentioned in this section, the Magistrate shall, instead of committing the accused person for trial, order him to be committed for sentence before the High Court, and in the meantime, the Magistrate shall, by his warrant, commit the

accused person to prison to be there safely kept until the sittings of that Court, or until he is admitted to bail or delivered by due course of law.

(3) The statement of guilt of the accused person made under this section shall be received in evidence upon its mere production, without further proof, by the Court before which he is brought for sentence.

(4) The Magistrate shall, as soon as is practicable after the committal for sentence of the accused person, transmit to the Director of Public Prosecutions the record or the proceedings in the manner required by section 29 and the Director of Public Prosecutions shall prefer and file in the High Court an indictment against the accused person committed for sentence within four months of the committal for sentence.

Bail on
committal for
trial

36. (1) If an accused person who is committed for trial or sentencing is granted bail, the recognizance of bail shall be taken in writing either from the accused person and one or more sureties or from the accused person alone, in the discretion of the Magistrate, according to the Bail Act, and shall be signed by the accused person and his surety or sureties, if any.

(2) The condition of such recognizance shall be that the accused person shall personally appear before the Court at anytime from the date of the recognizance to answer to any indictment that may be filed against him in the Court, and that he will not depart the Court without leave of the Court, and that he will accept service of any such indictment at some place to be named in such condition.

(3) The recognizance may be in the form set out in Schedule 4.

Schedule 4

37. (1) Where an accused person who is committed for trial or sentencing is not released on bail, a constable shall convey him to the prison, and shall there deliver him, together with the warrant of commitment to the Keeper of the prison, who shall thereupon give the constable a receipt for the accused person, which shall set forth the condition in which the accused person was when he was delivered into the custody of the Keeper.

Conveying
accused person
to prison

(2) It shall not be necessary to address any warrant of commitment under this or any other section of this Act to the Keeper of the prison, but, upon delivery of any such warrant to the Keeper by the person charged with the execution of the warrant, the Keeper shall receive and detain the accused person named in the warrant or detain him, if already in his custody, for the period and for the purpose as the warrant directs.

(3) In case of adjournments or remands, the Keeper shall bring the accused person, or cause him to be brought, at the time and place fixed by the warrant for that purpose, before the Magistrate.

(4) This section shall apply to every person who is committed to prison under any provision of this Act.

38. (1) Where an accused person is not released on bail only because he does not, at the time of his committal for trial, procure a sufficient surety or sureties for appearing to take his bail, the Magistrate shall endorse on the warrant of commitment, or on a separate paper, a certificate of his consent to the accused person being bailed, and shall state the amount of bail which ought to be required.

Bailing of
accused person
after committal

(2) Any Magistrate or Justice attending or being at the prison where the accused person is confined shall, on the production of such certificate, grant him bail accordingly, and shall order him to be discharged by a warrant of deliverance.

(3) If it is inconvenient for a surety or sureties to attend at the prison to join the accused person in the recognizance of bail, the committing Magistrate may make a duplicate of such certificate.

(4) Upon the production to any Magistrate of any such duplicate certificate, the Magistrate may take the recognizance of the surety or sureties in conformity with such certificate, and shall transmit the recognizance, if and when so taken, to the Keeper of the prison.

(5) Upon a recognizance and certificate as is mentioned in subsection (3) being produced to any Magistrate or Justice attending or being at such prison, the Magistrate or Justice may take the recognizance of the accused person, and thereupon the Magistrate or Justice shall order him to be discharged by a warrant of deliverance.

Judge may grant bail

39. A Judge of the High Court may at any time, on the petition of an accused person charged with an offence, grant him bail in accordance with the Bail Act and the recognizance of bail may, if the Judge so directs, be taken before any Magistrate.

Apprehension of accused person on bail but about to abscond

40. Where an accused person is bailed in the above manner, a Magistrate may, if he sees fit, on the application of the surety or of either of the sureties of such person, and on information being laid in writing and upon oath by the surety, or by some person on his behalf, that there is reason to believe that the person so bailed is about to abscond for the purpose of evading justice, issue his warrant for the apprehension of the person so bailed, and afterwards, on being satisfied that the ends of justice would otherwise be defeated, commit such person when so arrested to prison until his trial, or until he produces another sufficient surety or other sufficient sureties, as the case may be, in like manner as before.

41. (1) Where an accused person released on bail by a Magistrate is subsequently indicted by the Director of Public Prosecutions for an offence which is not bailable by a Magistrate, the Magistrate shall, on being informed of the fact by any police officer of the First Division of the Police Service, issue his warrant for the arrest of the accused person and commit him to prison in the same manner as if he had been originally committed for trial for the offence for which he is indicted.

Power to revoke or require higher bail

(2) For the purposes of this section, a person shall be deemed to be indicted when the indictment against him has been filed in the High Court.

(3) Where an accused person has been released on bail by a Judge or a Magistrate, and circumstances arise which, if the accused person had not been admitted to bail, would justify the Judge or Magistrate in refusing bail or in requiring bail of greater amount, the Judge or Magistrate may, on the circumstances being brought to his notice by any police officer of the First Division of the Police Service, issue his warrant for the arrest of the accused person, and, after giving the accused person an opportunity of being heard, may either commit him to prison to await trial or grant him bail for the same or an increased amount, as the Judge or Magistrate may think just.

42. All persons committed to prison under this Act shall be committed to any prison to be determined by the Commissioner of Prisons.

Place of commitment

Pre-trial requirements

43. (1) The Director of Public Prosecutions shall, at least fourteen days before the date fixed for trial, give notice to the Registrar of the Supreme Court of the names of the witnesses whom he desires to attend at the trial of the accused person at the High Court.

Chap. 12:02

(2) The Registrar shall, on receipt of a notice under subsection (1), *subpoena* the witnesses in accordance with the procedure set out in section 17 of the Criminal Procedure Act.

(3) The accused person may also give Notice to the Registrar of the names of witnesses whom he desires to attend at trial and the Registrar shall *subpoena* such witnesses in like manner as for the prosecution.

(4) Every person committed for trial, whether bailed or not shall be entitled, at any reasonable time before the trial, to have copies of the statements, documentary exhibits and the lists of exhibits relating to the committal proceedings from the Registrar.

Reading of
statements at
trial
Chap. 7:02

44. (1) At the trial of the accused person in the High Court sections 15C, 15D and 15E of the Evidence Act shall apply to all statements admitted as evidence under this Act.

(2) Where a witness is not within Trinidad and Tobago and it is not reasonably practicable to secure his attendance at trial, the Court may direct that a special measure shall apply.

(2) For the purposes of subsection (1), “a special measure” means any audiovisual live television link, video recording or any other measure other than direct oral evidence that may be available to the Court from time to time for the adducing of evidence.

Restriction on
publication of, or
report of
committal
proceedings

45. (1) No person shall print, publish, cause or procure to be printed or published, in relation to any committal proceedings under this Act, any particulars other than the following:

- (a) the name, address and occupation of the accused person and any witnesses;
- (b) a concise statement of the charge; and
- (c) submissions on any point of law arising in the course of the enquiry, and the decision of the Magistrate thereon,

unless the Court directs otherwise.

(2) Nothing in this section shall apply to the printing or reproduction by any other method of any pleading, transcript of evidence or other documents for use in connection with any judicial proceedings or the communication thereof to persons concerned in the proceedings, or to the printing or publishing of any notice or report in pursuance of the directions of the Magistrate.

(3) A person who acts in contravention of this section is liable on summary conviction in respect of each offence to a fine of **one hundred and fifty** thousand dollars and to imprisonment for **two years**.

PART VI MISCELLANEOUS

46. Part VI of the Summary Courts Act shall continue to apply to the summary trial of certain indictable offences. Part VI of the Summary Courts Act to apply

47. The Rules Committee established by the Supreme Court of Judicature Act may, subject to negative resolution of Parliament, make Rules for the purpose of this Act. Rules of Court Chap. 4:01

48. The Indictable Offences (Preliminary Enquiry) Act and the Administration of Justice (Indictable Proceedings) Act, 2011 are repealed. Repeal of Chap. 12:01 and Act No. 20 of 2011

49. Notwithstanding section 48 - Transitional

(a) the Indictable Offences (Preliminary Enquiry) Act shall continue to apply to preliminary enquiries where proceedings have begun before the Magistrates' Court prior to the coming into force of this Act; and

(b) section 39 of the Indictable Offences (Preliminary Enquiry) Act shall continue to apply to any trial where the preliminary enquiry was conducted under

the Indictable Offences (Preliminary Enquiry) Act prior to the commencement of this Act.

Consequential references and amendments

50. (1) In any written law a reference to “deposition” or “depositions” in relation to a preliminary enquiry shall be construed as a reference to “a statement filed on committal proceedings”, or “statements filed in committal proceedings”, as the case may be.

(2) Any reference in a written law to a preliminary enquiry under the Indictable Offences (Preliminary Enquiry) Act, repealed by this Act shall, where applicable, be construed as a reference to committal proceedings under this Act.

Schedule 5

(3) The written laws mentioned in the First Column of Schedule 5 are amended to the extent specified in the Second Column of that Schedule.

SCHEDULE 1

FORM A

[Section 8(7)]

REPUBLIC OF TRINIDAD TOBAGO

**COMPLAINT UPON OATH
INDICTABLE OFFENCE**

Magisterial District of.....

A.B. Complainant

v.

C.D. Accused Person

The complaint of A.B. of

Who said on this oath (1).....that C.D., of

.....(2)

(3)

And the said A.B. prays that the said C.D. may be summoned to answer the said complaint (4)

(5).....

.....
Signature of Complainant

Taken before me thisday of, 20....at

.....
(Magistrate or Justice)

- (1) Or, affirmation.
- (2) State concisely the substance of the complaint.
- (3) Add, for the arrest of a witness- *And he further saith that E.F. ofcan give material evidence, but is not likely to attend voluntarily; or, and willfully avoids service of the summons.*
- (4) Or, if a warrant is desired in the first instance – *may be apprehended for the said offence, and dealt with according to law.*
- (5) Or, for sureties for the peace- *And he makes this complaint for the safety of his person and property and not from malice or revenge against the said C.D.*
Add, for the arrest of a witness- *And he further prays that E.F. may be apprehended and brought before the Court to give evidence.*

FORM B

[Section 9(6)]

REPUBLIC OF TRINIDAD TOBAGO

**COMPLAINT WITHOUT OATH
*INDICTABLE OFFENCE***

Magisterial District of

A.B. Complainant

v.

C.D. Accused Person

A.B., of
comes before me, the undersigned Magistrate [or Justice] for the
.....District, and complains against C.D., of
..... for that the said C.D. (1)
and the said A.B. prays that the said C.D. may be summoned to
answer the said complaint.

.....
Signature of Complainant

Before me thisday of, 20.....
at.....

.....
(Magistrate or Justice)

(1) State concisely the substance of complaint.

SCHEDULE 2

[Section 13(3)]

REPUBLIC OF TRINIDAD TOBAGO

WARRANT REMANDING A PRISONER

TO: POLICE OFFICERS IN TRINIDAD AND TOBAGO

You are hereby commanded forthwith to arrest, if necessary, and convey to the

[Name of Prison]

.....

XY

who has been remanded to.....

[Period of Remand]

And I hereby command you, the Keeper of the said prison, to receive each of the said persons into your custody in the prison and keep him safely until the day when his remand expires and then to have him before me or any other Magistrate at o'clock of the said day, there to answer to the charge and to be dealt with according to law, unless you are otherwise ordered before that time.

Dated thisday of, 20.....

at

.....

Magistrate

SCHEDULE 3

[Section 25(3)]

WARRANT OF COMMITMENT

To(*Constable*), and to
....., *Keeper of the Prison*.

Whereas *A.B.* was this day charged before me the undersigned

Magistrate on the complaint of.....,
for that [*state briefly the offence*]:

These are therefore to command you, the said
to take the said
[*A.B.*]
and him safely to convey to the Prison in
....., and there to deliver him to the Keeper
thereof, together with this precept: and I do hereby command you,
the said Keeper of the said Prison, to receive the said
.....

[*A.B.*]
into your custody in the said Prison and there safely keep him until
he shall be thence delivered by due course of law.

Date

.....
(*Magistrate*)

SCHEDULE 4

[Section 36(3)]

RECOGNIZANCE OF BAIL ON COMMITTAL

THE STATE

Against

A.B. on the charge of C.D. for [state offence briefly].

At in the said Trinidad and Tobago on this day of in the year of Our Lord Two Thousand of in the said Trinidad and Tobago, acknowledges himself to be indebted to the State, in the sum of....., and of acknowledges himself to be indebted to the State, in the sum of; upon condition that, if the said do personally appear before the High Court, in the ofto answer to any indictment that shall be presented against him in the said Court in or about the premises, from the date of this acknowledgment, and do not depart the Court without leave, and do accept service of any such indictment at the residence of situated in in the..... of.....and that the said..... in the meantime be of good behaviour, and keep the peace towards the State and especially towards then this recognizance to be void; or else to remain in full force. And the said severally acknowledge themselves debtors *in solidum* to the State in the sums hereinbefore respectively, acknowledged by them upon the property of them and each of them, to the use of the State, to be levied in due form of law, in case of default made in the condition of this recognizance or obligation.

Acknowledged by the said on the .
 day of 20.....

Witness.....

Before me,

.....

SCHEDULE 5

[Section 50(3)]

CONSEQUENTIAL AMENDMENTS

First Column Written Law	Second Column Extent of Amendment
1. Supreme Court of Judicature Act, Chap. 4:01	In the Schedule, in rule 42, delete the words “Indictable Offences (Preliminary Enquiry) Act” and substitute the words “Indictable Offences (Committal Proceedings) Act, 2014.
2. Summary Courts Act, Chap. 4:20	<p>A. In section 5, insert after subsection (4) the following new subsection: “ (5) A Clerk of the Peace under this section shall be <i>ex-officio</i> as Justice of the Peace of Trinidad and Tobago.”.</p> <p>B. In section 32, delete the words, “to take depositions” and substitute the words, “at committal proceedings”.</p> <p>C. In section 55, delete the words “, and depositions shall be taken,”.</p> <p>D. In section 63B(2), delete the words “and any other depositions”.</p> <p>E. In section 94(1) – (a) delete the words “upon the holding of any preliminary enquiry” and substitute the words “in committal proceedings”; and (b) insert after the word “evidence” the words “in the documents filed under sections 14 and 15 of the Indictable Offences (Committal Proceedings) Act, 2014”.</p> <p>F. In section 100(2), delete the words “preliminary enquiry” and substitute the words “committal proceedings”.</p>

3. Evidence Act,
Chap. 7:02
- In section 15F –
- (a) delete the words “preliminary enquiry” wherever they occur and substitute the words “committal proceeding”; and
 - (b) delete the words “Indictable Offences (Preliminary Enquiry) Act” and substitute the words “Indictable Offences (Committal Proceedings) Act, 2014”.
4. Legal Aid and
Advice Act,
Chap 7:07
- In section 17, delete the words “Indictable Offences (Preliminary Enquiry) Act” and substitute the words “Indictable Offences (Committal Proceedings) Act, 2014.
5. Criminal
Procedure Act,
Chap. 12:02
- A. Delete the words “Indictable Offences (Preliminary Enquiry) Act”, wherever they occur and substitute the words “Indictable Offences (Committal Proceedings) Act, 2014”; and
 - B. In section 59(3), delete the words “section 26 of the Indictable Offences (Preliminary Enquiry) Act”, and substitute the words “section 30 of the Indictable Offences (Committal Proceedings) Act, 2014”.
6. Criminal
Procedure
(Corporations)
Act,
Chap. 12:03
- In section 3(1), delete the words “Indictable Offences (Preliminary Enquiry) Act”, and substitute the words “Indictable Offences (Committal Proceedings) Act, 2014”.

Passed in the House of Representatives this day of ,
2014.

Clerk of the House

I confirm the above.

Speaker

Passed in the Senate this day of , 2014.

Clerk of the Senate

I confirm the above.

President of the Senate