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Second Session Eleventh Parliament Republic of
Trinidad and Tobago

HOUSE OF REPRESENTATIVES

BILL

AN ACT to abolish preliminary enquiries and to
provide for the pre-trial procedure in respect of
indictable offences and for ancillary matters

THE INDICTABLE OFFENCES (PRE-TRIAL PROCEDURE)
BILL, 2017

Explanatory Notes

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

The purpose of the Bill is to abolish preliminary enquiries and to provide for the pre-trial procedure in respect of indictable offences and for ancillary matters.

Clause 1 would provide for the short title of the proposed Act.

Clause 2 would allow for the Act to come into operation by Proclamation.

Clause 3 would define certain words and expressions used in the Act.

Clause 4 would set out the circumstances under which Magistrates and Justices of the Peace would exercise concurrent jurisdiction.

Clause 5 would allow any Magistrate to issue a summons or warrant to compel the appearance of an accused person before him.

Clause 6 would provide for the issuance of search warrants by a Magistrate and matters related thereto.

Clause 7 would empower a Magistrate or Justice of the Peace to issue a summons or warrant where a complaint alleging the commission of an indictable offence is made in writing.

Clause 8 would make provisions for the issuance by a Magistrate of a warrant for the apprehension of an accused person, where a complaint is made in writing and upon oath.

Clause 9 would provide for the issuance, contents and service of a summons by a Magistrate.

Clause 10 would provide for the endorsement of a warrant with a direction for bail by a Magistrate.

Clause 11 would make provisions for dealing with a person apprehended upon a warrant.

Clause 12 would provide that the validity of a complaint, summons or warrant will not be affected by any irregularity or defect, and would enable a Magistrate to make any necessary amendments if the ends of justice so require.

Clause 13 would provide for the remand of an accused person.

Clause 14 would provide for the transmission of documents by the police to the Director of Public Prosecutions whenever a charge has been brought against a person for an indictable offence.

Clause 15 would provide for the service of documents in support of the prosecution by the Director of Public Prosecutions on the accused person or his Attorney-at-law.

Clause 16 would provide for the service of documents in support of the defence by an accused person or his legal representative on the Director of Public Prosecutions.

Clause 17 would set out the conditions under which a statement served under clause 15 or 16 would be admissible as evidence. It would also provide for a declaration to be made by the person who records the statement.

Clause 18 would provide for the marking, custody and production at trial of all exhibits referred to in clauses 14, 15 and 16.

Clause 19 would provide for the serving of a notice of alibi by an accused person.

Clause 20 would provide for the service of further evidence at any time before the trial.

Clause 21 would require the Director of Public Prosecutions to keep the above-mentioned documents until the relevant indictment is filed and then to transmit them to the Registrar of the Supreme Court who would be required to produce them at the trial.

Clause 22 would provide for the preferral of indictments by the Director of Public Prosecutions.

Clause 23 would provide the circumstances under which the Director of Public Prosecutions may prefer an indictment, whether or not a complaint has been filed.

Clause 24 would provide for the admission of secondary evidence where the original evidence has been lost or destroyed.

Clause 25 would provide for the presentation at a trial of additional evidence of a material nature in support of the offence.

Clause 26 would provide for the circumstances under which the Director of Public Prosecutions may refer a case back to a Magistrate.

Clauses 27 and 28 would provide for the committal of an accused person for sentence by the High Court after he pleads guilty to a charge before a Magistrate.

Clause 29 would provide for the recognizance of bail in respect of an accused person who is committed for sentencing and the conditions under which such recognizance is to be granted.

Clause 30 would provide for the conveyance of an accused person to prison and his subsequent appearance before a Magistrate.

Clause 31 would provide for the granting of bail on the basis of a Magistrate's certificate where an accused person is unable to procure sufficient sureties.

Clause 32 would provide for the granting of bail by a Judge of the High Court on the petition of an accused person.

Clause 33 would provide for the apprehension of an accused person who has been granted bail and who is about to abscond.

Clause 34 would provide for certain circumstances in which a Magistrate or Judge may revoke or require higher bail for an accused person.

Clause 35 would provide for a person committed to prison to be sent to a prison determined by the Commissioner of Prisons.

Clause 36 would provide for the issuing of *subpoenas* to witnesses and other pre-trial arrangements.

Clause 37 would provide for the reading of statements and the use of special measures, such as audiovisual live television links and video recordings, at a trial.

Clause 38 would make it an offence to publish or report the particulars of a charge for an indictable offence, other than the name, address and occupation of the accused person and any witnesses and a concise statement of the charge, unless the Court or Magistrate directs otherwise.

Clause 39 would provide for the continued application of Part VI of the Summary Courts Act, Chap. 4:20 (which relates to the summary trial of certain indictable offences).

Clause 40 would enable the Rules Committee to make rules for the purposes of the proposed Act.

Clause 41 would provide for the repeal of Chap. 12:01, Act No. 20 of 2011 and Act No. 14 of 2015.

Clause 42 would make certain transitional provisions.

Clause 43 would provide for certain consequential amendments.

THE INDICTABLE OFFENCES (PRE-TRIAL PROCEDURE)
BILL, 2017

Arrangement of Clauses

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BILL

AN ACT to abolish preliminary enquiries and to provide
for the pre-trial procedure in respect of indictable
offences and for ancillary matters

[, 2017]

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

PART I

PRELIMINARY

| | |
|----------------|---|
| Short title | 1. This Act may be cited as the Indictable Offences (Pre-Trial Procedure) Act, 2017. |
| Commencement | 2. This Act comes into operation on such date as is fixed by the President by Proclamation. |
| Interpretation | 3. In this Act— |
| | “complaint” includes any information or charge relating to an indictable offence; |
| | “Court” means the High Court or a Judge of the High Court; |
| | “documentary exhibit” includes any device by which information is received or stored; |
| Chap. 6:54 | “interpreter” means a person who holds a valid licence, or who is appointed, under the Interpreters Act; |
| | “Justice” means a Justice of the Peace; |
| Chap. 4:20 | “Keeper” has the same meaning assigned to it by section 2 of the Summary Courts Act; |
| Chap. 13:01 | “prison” means any place referred to in section 3 of the Prisons Act or declared or appointed a prison under that Act; |
| | “Registrar” means the Registrar of the Supreme Court; |
| | “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). |

4. (1) For the purposes of this Act, Justices shall ^{Concurrent jurisdiction of Justices} 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; ^{Chap. 4:60}
- (e) remand an accused person in custody; and
- (f) administer oaths.

(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.

5. Any Magistrate may issue a summons or warrant ^{Compelling appearance of accused person} 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 ^{Power to issue a search warrant} that there is reasonable ground for believing that there is in any building, ship, vessel, vehicle, box, receptacle, or place, anything-

- (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 for the purpose of evidence on the trial.

(5) A Magistrate under subsection (4), in taking reasonable care to preserve a thing, shall, where appropriate, cause the thing 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 thing seized under this section is no longer required for the purpose of evidence in any 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 an indictment is not preferred, 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 written law 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 that written law, 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 Complaint in writing 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.

8. (1) Where a complaint is made in writing and upon Warrant in the first instance 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.

(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 a 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, a warrant may be issued.

(6) A Magistrate may issue a warrant under subsection (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.

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

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 ^{Warrant endorsed} for the arrest of any person in respect of any offence ^{for bail} may, subject to the provisions of the Bail Act, grant him ^{Chap. 4:60} bail by endorsing the warrant with a direction in accordance with subsection (2).

(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 a Magistrate at such 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.

Dealing with person
apprehended upon
warrant

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 may grant the person arrested bail in accordance with the Bail Act, or commit him to prison according to the provisions hereinafter contained.

Irregularity in
summons, warrant,
service or arrest

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, shall affect the validity of any proceeding.

(2) Where an 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, 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, defect or error mentioned in this section has occurred and that the ends of justice require it, he may make any necessary amendments, and, if it is expedient to do so, adjourn the proceedings upon such terms as he may think fit.

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 an accused person is remanded, the Magistrate shall adjourn the appearance of the accused person before him and the adjournment shall not, unless the accused person and the prosecutor consent, be for longer than twenty-eight clear days.

(5) 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 him at the adjournment pursuant to subsection (4), the Magistrate may, in the absence of the accused person, order him to be further remanded for no longer than twenty-eight clear days.

PART III

PRE-TRIAL PROCEDURE

14. Wherever any charge has been brought against any person for an indictable offence, the police shall submit to the Director of Public Prosecutions—

Transmission of documents by police to DPP

- (a) the complaint;
- (b) any statements of witnesses in support of the charge;
- (c) any documentary exhibit which might be produced in evidence by the prosecutor at the trial; and
- (d) a list of exhibits, if there are any exhibits, which might be produced in evidence by the prosecutor at the trial.

15. The Director of Public Prosecutions shall, within three months of receiving documents pursuant to section 14 or within such further period as a Magistrate

Service of documents on accused person

may, on application, permit, cause a copy of the complaint and of the statements, documentary exhibits and the list of exhibits which he intends to produce in evidence at trial to be served on the accused person or his Attorney-at-law.

Accused person may
serve statements
and exhibits in reply

16. An accused person or his legal representative may, within three months of being served under section 15 or within such further period as a Magistrate may, on application, permit, in reply, serve on the Director of Public Prosecutions—

- (a) a statement of any evidence that the accused person wishes to give on his own behalf at his trial;
- (b) any statements of witnesses in support of the defence;
- (c) any documentary exhibits which he intends to produce in evidence at the trial;
- (d) a list of exhibits, if there are any exhibits, which he intends to produce in evidence at the trial; and
- (e) a notice of alibi, if any, in accordance with section 19.

Admissibility of
statements

17. (1) A statement served under section 15 or 16 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.

(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 ten years of age, the statement was sworn before a Justice and is authenticated by a certificate 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.

(4) Notwithstanding section 98 of the Children Act, 2012, where a statement is made by a child under ten 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 and the consequences of not speaking the truth. Act No. 12 of 2012

(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 shall be treated as if it had been produced as an exhibit and identified in Court by the maker of the statement.

(9) For the purposes of subsections (5), (6) and (7), the person who—

- (a) records and reads the statement aloud to the person who cannot read or write under subsection (5) or (6), respectively; or
- (b) records, reads and translates the statement to the person who requires an interpreter under subsection (7),

shall sign a declaration that the person under subsection (5), (6) or (7) understood what was written,

confirmed that it was true, and that the statement reflected what he would have said orally.

18. (1) The exhibits referred to in sections 14, 15 and 16 shall be duly marked. Exhibits to be marked and delivered

(2) All exhibits, other than documentary exhibits, shall be taken charge of by the police or another appropriate body and shall be produced by them or it, at trial.

19. (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 serve under section 16, to serve a notice of alibi after he has been served documents by the prosecutor. Notice of alibi

(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 accused person 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) A notice of alibi 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.

20. (1) The prosecutor, or an accused person or his Attorney-at-law, may, at any time before the trial, serve further evidence on the other party. Further evidence

(2) Further evidence served under subsection (1) shall be treated in the same manner as documents served under sections 15 and 16.

Custody of documents

21. Subject to this Act, the complaint, statements and other documents and documentary exhibits received from the police, or the accused person or his Attorney-at-law, by the Director of Public Prosecutions, 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, who shall keep them and produce them to the Court at the trial of the accused person.

Preferral of indictment

22. (1) A person who is charged with an indictable offence may be indicted for any offence for which he was charged or for any offence which, in the opinion of the Director of Public Prosecutions, is disclosed by the documents or evidence submitted to the Director of Public Prosecutions.

(2) Where the Director of Public Prosecutions does not prefer an indictment against an accused person within twelve months after the expiration of the period specified in section 16 or within such further period as a Magistrate may, on application, permit, the accused may apply to a Judge for a discharge and the Judge may discharge the accused if, having considered the reason for the delay in preferring an indictment, he is satisfied that in all the circumstances of the case it would be just to do so.

Chap. 12:02

(3) The Criminal Procedure Act shall apply to an indictment preferred under this Act.

Preferral of indictment without complaint in certain circumstances

23. The Director of Public Prosecutions may prefer an indictment whether or not a complaint has been filed in the following instances:

- (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;

Chap. 6:04

- (b) where a person is charged with an offence involving serious or complex fraud; or
- (c) in respect of offences of a violent or sexual nature and where there is a child witness, or an adult witness who has been assessed as one subject to threats, intimidation or elimination.

24. (1) Where the original of a complaint, any ^{Lost or destroyed} statement of any witness, any ^{documents} documentary exhibit to the statement, or any notice of alibi or other statement of the accused person is lost or destroyed, then in all proceedings at trial, secondary evidence of the contents of the document shall be admitted in every case in which the original document would be admissible.

(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.

25. Where an accused person has been indicted for ^{Fresh evidence} any offence disclosed by the evidence submitted to the Director of Public Prosecutions and additional evidence of a material nature in support of the offence becomes

available, the new evidence may, with notice to the accused person and the leave of the Court, be given as fresh evidence at the trial.

DPP to refer back
case to be dealt with
summarily

26. (1) If, after the receipt of the statements and other documents mentioned in sections 14 and 16, the Director of Public Prosecutions is of the opinion that the accused person should not be indicted, but that the case should be dealt with summarily, the Director of Public Prosecutions may, if he thinks fit, refer the case back to the Magistrate to be dealt with summarily.

(2) Where the Director of Public Prosecutions directs 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 the 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.

27. 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.”; and

(b) may commit him for sentence before the Court in accordance with section 28(2).

28. (1) Where the accused person, in answer to the question referred to in section 27, 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 and the accused person.

(2) In any such case as mentioned in this section, the Magistrate shall order the accused person to be committed for sentence before the 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 the 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 of the proceedings and the Director of Public Prosecutions shall prefer and file in the Court an indictment against the accused person committed for sentence within four months of the committal for sentence.

Bail on committal
for sentencing

29. (1) If an accused person who is committed for 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.

Schedule 3

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

Conveying accused
person to prison

Schedule 4

30. (1) Where an accused person is not released on bail, a constable shall convey him to the prison, and shall there deliver him, together with the warrant of commitment in the form set out in Schedule 4, 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.

(2) It shall not be necessary to address any warrant 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.

31. (1) Where an accused person is not released on bail only because he does not 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.

32. The 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 Court so directs, be taken before any Magistrate.

Judge may grant
bail

Apprehension of
accused person on
bail but about to
abscond

33. Where an accused person is bailed pursuant to this Act, 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.

Power to revoke or
require higher bail

34. (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 to prison to await trial for the offence for which he is indicted.

(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 Court.

(3) Where an accused person has been released on bail by the Court or a Magistrate, and circumstances arise which, if the accused person had not been admitted to bail, would justify the Court or Magistrate in refusing bail or in requiring bail of greater amount, the Court or Magistrate, as the case may be, may, on the circumstances being brought to its or his notice by any police officer of the First Division of the Police Service, issue a 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 Court or Magistrate may think just.

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

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

(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.

Chap. 12:02

(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.

37. (1) At the trial of the accused person in the Court, Reading of statements at trial sections 15C, 15D and 15E of the Evidence Act shall Chap. 7:02 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.

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

Restriction on
publication of, or
report of charge

38. (1) No person shall print, publish, cause or procure to be printed or published, in relation to any charge for an indictable offence, any particulars other than the following:

- (a) the name, address and occupation of the accused person and any witnesses; and
- (b) a concise statement of the charge,

unless the Court or Magistrate 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 Court or 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 imprisonment for two years.

PART IV

MISCELLANEOUS

Part VI of the
Summary Courts Act
to apply

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

Rules of Court
Chap. 4:01

40. The Rules Committee established by the Supreme Court of Judicature Act may, subject to negative resolution of Parliament, make rules for the purposes of this Act.

41. The Indictable Offences (Preliminary Enquiry) Act, the Administration of Justice (Indictable Proceedings) Act, 2011 and the Indictable Offences (Committal Proceedings) Act, 2014 are repealed. Repeal of Chap. 12:01, Act No. 20 of 2011 and Act No. 14 of 2014

42. Notwithstanding section 41—

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.

43. The written laws specified in the First Column of Schedule 5 are amended to the extent specified in the Second Column of that Schedule. Consequential amendments Schedule 5

SCHEDULE 1

FORM A

[Section 8(7)]

REPUBLIC OF TRINIDAD AND TOBAGO

COMPLIANT 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 AND TOBAGO

COMPLIANT 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 AND 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 this day of , 20.....
at

.....
Magistrate

SCHEDULE 3

[Section 29(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 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 saidon
 the day of 20.....

Witness.....

Before me,

.....

SCHEDULE 4

[Section 30(1)]

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 5

(Section 43)

CONSEQUENTIAL AMENDMENTS

| <i>First Column</i> <i>Written Law</i> | <i>Second Column</i> <i>Extent of Amendment</i> |
|--|---|
| 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 (Pre-Trial Procedure) Act, 2017”. |
| 2. Summary Courts Act, Chap. 4:20 | <p>A. In section 5, insert after subsection (4) the following new subsection:</p> <p style="padding-left: 40px;">“ (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, “and to a Magistrate sitting to take depositions on the hearing of a charge of any indictable offence, and”.</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. Repeal section 94.</p> <p>F. In section 100(2), delete the words “during the preliminary enquiry into the offence”.</p> |
| 3. Evidence Act, Chap. 7:02 | Repeal section 15F. |

SCHEDULE 5—CONTINUED

(Section 43)

CONSEQUENTIAL AMENDMENTS—Continued

| <i>First Column</i> <i>Written Law</i> | <i>Second Column</i> <i>Extent of Amendment</i> |
|---|---|
| 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 (Pre-Trial Procedure) Act, 2017”. |
| 5. Criminal Procedure Act, Chap. 12:02 | <p>A. Delete the words “Indictable Offences (Preliminary Enquiry) Act”, wherever they occur and substitute the words “Indictable Offences (Pre-Trial Procedure) Act, 2017”; and</p> <p>B. In section 59(3), delete the words “section 26 of the Indictable Offences (Preliminary Enquiry) Act”, and substitute the words “section 26 of the Indictable Offences (Pre-Trial Procedure) Act, 2017”.</p> |
| 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 (Pre-Trial Procedure) Act, 2017”. |
| 7. Children Act, 2012, Act No. 12 of 2012 | In section 98(3), delete the words “and shall be deemed to be a deposition”. |

No. 12 of 2017

SECOND SESSION
ELEVENTH PARLIAMENT

REPUBLIC OF
TRINIDAD AND TOBAGO

BILL

AN ACT to abolish preliminary enquiries
and to provide for the pre-trial
procedure in respect of indictable
offences and for ancillary matters

Received and read the

First time

Second time

Third time
