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Trinidad and Tobago

HOUSE OF REPRESENTATIVES

BILL

AN ACT to amend the Administration of Justice
(Indictable Proceedings) Act, 2011 (Act No. 20 of
2011)

THE ADMINISTRATION OF JUSTICE (INDICTABLE
PROCEEDINGS) (AMENDMENT) BILL, 2018

Explanatory Notes

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

The Bill seeks to amend the Administration of Justice (Indictable Proceedings) Act, 2011 (Act No. 20 of 2011) (hereinafter referred to as “the Act”) which provides for the abolition of preliminary enquiries and for the holding of initial and sufficiency hearings by a Master of the High Court where a person is charged with an indictable offence.

Clause 3 of the Bill would amend section 3 of the Act by inserting certain definitions and amending the definition of “prosecutor” to include a police prosecutor. References to Justices of the Peace would be changed to Clerks of the Peace who perform certain functions in the absence of Magistrates.

Clause 4 of the Bill would amend section 5 of the Act to make it clear that the contents of computers and electronic devices can be searched under a search warrant and that a search warrant can be executed on a Saturday, Sunday or public holiday. A constable who executes a search warrant would not be required to carry seized items before a Master but would be required to file in the High Court a report describing the things seized pursuant to the search warrant and to serve a copy of the report on the owner or occupier of the place searched or a person from whom anything was taken.

The Commissioner of Police would be able to authorise persons, other than the police, to have the custody seized items for safe keeping. Photographs of seized items which are taken by a police photographer in the presence of a Justice of the Peace would be admissible in evidence and provision would be made for seized items which are no longer needed as evidence in criminal proceedings to be restored to the persons from whom they taken, whether or not the criminal proceedings have been determined. Provision would also be made for the destruction of forged instruments if an indictment is not preferred and for searches involving explosive, dangerous or noxious substances and the disposal of those substances.

Clause 5 of the Bill would amend section 6 of the Act to provide for a statutory form for a complaint, which would be included in a new Schedule 1 to the Act. Similarly, clause 6 of the Bill would amend section 7 of the Act by providing for a statutory form for a summons, which would also be included in the new Schedule 1 to the Act.

Clause 7 of the Bill would amend section 8 of the Act to specify the criteria to be taken into account for the issuing of an arrest warrant.

Clause 8 of the Bill would insert a new section 8A into the Act which would provide for the procedure to be followed where an accused appears before a Magistrate on a charge for an indictable offence, including an either-way offence. A summary offence which is related to an offence which is to be tried on indictment would be sent to the High Court to be dealt with and tried together with the relevant indictable offence. Where a Magistrate sends a case to the High Court, the Magistrate would issue a notice to the Registrar of the Supreme Court and cause the notice and the complaint to be filed in the High Court. A copy of the notice would also be served on the accused and the accused would appear before a Master on the next available day that the High Court sits as determined by the Registrar or on such other day as may be agreed between the accused and the prosecutor with the approval of the Registrar. A Magistrate would have the power to grant bail or remand the accused in custody and to adjourn the appearance of the accused before him for no more than twenty-eight clear days.

Clause 9 of the Bill would amend section 9 of the Act to incorporate references to “arrest warrant” which would be defined in section 3 of the Act.

Clause 10 of the Bill would amend section 10 of the Act to enable Clerks of the Peace to exercise concurrent jurisdiction with Masters and Magistrates in issuing search warrants, summons and arrest warrants, receiving complaints, granting bail, taking recognisances and remanding an accused in custody. Search warrants and arrest warrants issued by Magistrates and Clerks of the Peace would be endorsed with a direction that the report on seized items be delivered to, and any person arrested be brought before, a Master. A Master or Magistrate would also be empowered to issue summons and arrest warrants for persons accused of having committed an indictable offence within or outside Trinidad and Tobago.

Clause 11 of the Bill would amend section 11 of the Act to allow for the conduct of initial hearings with respect to summary offences which are related to indictable offences and to specify the documents which the police would be required to submit to the Director of Public Prosecutions under a Scheduling Order.

Clause 12 of the Bill would amend section 12 of the Act to enable a prosecutor to inform a Master when any either-way offence is to be dealt with summarily and to enable both fine and imprisonment to be imposed where a person is summarily convicted of an indictable offence.

Clause 13 of the Bill would amend section 13 of the Act to increase, from five days to ten days, the period for an accused to give particulars of his alibi to the Director of Public Prosecutions. Where an accused has not given notice of his alibi to the Director of Public Prosecutions within the ten-day period, he would not be able to adduce evidence of or in support of an alibi at the trial without the leave of the Court. Where the Court grants leave, the Court would also be required to give the prosecutor sufficient time to prepare to test the evidence.

Clause 14 of the Bill would amend section 15 of the Act to enable a Master to make any necessary amendments to remedy any irregularity, defect or error in a complaint, summons or warrant.

Clause 15 of the Bill would amend section 18 of the Act to substitute references to “the Commissioner of Prisons” with references to “the Keeper” which would be defined in section 3 of the Act.

Clause 16 of the Bill would amend section 19 of the Act provide that the failure of an accused to file documents within the time specified in the Scheduling Order would not prevent a Master from proceeding with and concluding a sufficiency hearing. A reference to “initial hearing” would also be corrected to refer to a “sufficiency hearing”.

Clause 17 of the Bill would amend section 20 of the Act to afford the prosecutor or the accused an opportunity to be heard by way of oral or written submission at a sufficiency hearing and to remove the provision for all witness statements and other documentary evidence to be read aloud for an accused who is not represented by an Attorney-at-law at a sufficiency hearing.

Clause 18 of the Bill would amend section 21 of the Act to exclude children under fourteen years of age from making a sworn statement and to require a qualified person to assist the Court to determine whether such a child has sufficient intelligence to justify the reception of his statement as evidence and whether the child understands the duty of speaking the truth and the consequences of not speaking the truth.

Provision would also be made for a statement by a person who does not speak English to be taken through an interpreter. The term “interpreter” would be defined in section 3 of the Act as a person who holds a valid licence, or is appointed, under the Interpreters Act, Chap. 6:54. Additionally, a person who records a statement made by a person who cannot read, write or speak English and who reads it back to the person who made the statement would be required to sign a declaration that the person who made the statement understood what was written and confirmed that the statement was true and accurate.

Clause 19 of the Bill would repeal and replace section 22 of the Act and would provide for the filing of further evidence at a sufficiency hearing by the prosecutor or the accused.

Clause 20 of the Bill would repeal and replace section 23 of the Act and would provide for the orders which a Master may make at a sufficiency hearing after reviewing the evidence and considering any submissions. A Master would be able to order that an accused be discharged or put on trial and to make other orders in relation to the case, the charge or the accused.

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

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

Section 27(3) of the Act gives the Director of Public Prosecutions the option to request a sufficiency hearing in certain circumstances after an indictment is filed. By clause 24 of the Bill,

the Director of Public Prosecutions would also be able to exercise this option where the accused is charged with an offence involving serious or complex fraud, where a Magistrate was unable to complete a preliminary enquiry before the coming into force of the Act or where a Master is unable to complete a sufficiency hearing.

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

Clause 26 of the Bill would amend the Act by inserting new sections 28A to 28E, which would provide for the procedure to be followed where an accused pleads guilty and does not require witnesses to appear at the trial; for the taking of recognisances where an accused who is committed for trial or sentencing is granted bail; for the apprehension of an accused who is likely to abscond after he is committed for trial or sentencing and granted bail; for revoking or increasing bail; and for the Commissioner of Prisons to determine the prison in which an accused is to be incarcerated.

Clause 27 of the Bill would amend section 30 of the Act to provide for the issuing of *subpoenas* for witnesses for the prosecution and the defence to attend a trial and for the provision by the Registrar to the accused of copies of the statements, documentary exhibits and lists of exhibits relating to the sufficiency hearing.

Clause 28 of the Bill would amend section 31(1) of the Act to provide for the Court's discretion with respect to the publication of information relating to a sufficiency hearing. The publication of the name, image, address and occupation of an adult accused, and of any submissions and rulings on points of law, would be permitted.

Clause 29 of the Bill would renumber Schedule 1 as Schedule 1A and insert a new Schedule 1 which would contain certain forms.

Clause 30 of the Bill would insert Schedule 4A which would contain the form entitled "Recognisance of Bail on Committal".

BILL

AN ACT to amend the Administration of Justice
(Indictable Proceedings) Act, 2011 (Act No. 20 of
2011)

[, 2018]

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

1. This Act may be cited as the Administration of Short title
Justice (Indictable Proceedings) (Amendment) Act,
2018.

Interpretation
Act No. 20 of 2011

2. In this Act, “the Act” means the Administration of Justice (Indictable Proceedings) Act, 2011.

Section 3 amended

3. Section 3 of the Act is amended—

(a) in subsection (1)—

(i) by inserting in the appropriate alphabetical sequence, the following definitions:

“arrest warrant” means a warrant issued under section 6 or 8 for the apprehension of an accused;

“documentary exhibit” includes a statement, extract, photograph, computer printout or other document;

“either-way offence” means—

(a) an offence which is triable on indictment or summarily;
or

(b) an offence specified in Schedule 2;

“indictable offence” means an offence which is triable only on indictment or an either-way offence;

“interpreter” means a person who holds a valid licence, or who is appointed, under the Interpreters Act;

Chap. 6:54

“Keeper” has the 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 Chap. 13:01 declared or appointed a prison under that Act;

“search warrant” means a warrant issued under section 5(1); and

(ii) by deleting the definition of “prosecutor” and substituting the following definition:

“ “prosecutor” includes the Director of Public Prosecutions, a person acting under and in accordance with his general or special instructions or a police prosecutor or, in the case of the private prosecution of an offence, the person prosecuting that offence;”;

(b) in subsection (2), by deleting the word “Justice” and substituting the word “Clerk”; and

(c) in subsection (3), by deleting the word “Justice” and substituting the word “Clerk”.

4. Section 5 of the Act is amended—

Section 5 amended

(a) in subsection (1)—

(i) by deleting the word “believing” wherever it occurs and substituting in each place the word “suspecting”;

- (ii) by inserting after the word “receptacle” wherever it occurs, the words “, computer, electronic device”; and
 - (iii) by deleting the words “seize and carry it before the Master issuing the warrant or some other Master, to be dealt with by him according to law” and substituting the words “seize it and report the seizure to the Master issuing the warrant or another Master in accordance with subsection (3)”;
- (b) in subsection (2)—
- (i) by deleting the words “warrant under subsection (1)” and substituting the words “search warrant”; and
 - (ii) by inserting after the word “day”, the words “, including a Saturday, Sunday or public holiday”; and
- (c) by repealing subsections (3) and (4) and substituting the following subsections:
- “ (3) Upon the execution of a search warrant, a constable shall forthwith complete a report describing anything seized, whether specified in the search warrant or not, and shall—
- (a) forthwith serve a copy of the report on the owner or occupier of the place searched or a person from whom anything was taken; and

- (b) within fourteen days—
- (i) deliver a copy of the report to the Master who issued the search warrant, or if delivery to that Master is not possible, to another Master; and
 - (ii) file the report in the High Court.

(4) A report under subsection (3) shall be in the form set out as Form 1 in Schedule 1.

Form 1
Schedule 1

(5) For the purposes of safe keeping anything seized under this section for the purpose of evidence in criminal proceedings, the Commissioner of Police shall cause it to be detained in the custody of the police or a person authorized by him to receive it.

(6) A person shall, during any period that he is assigned responsibility for the safe keeping of anything seized under this section, take reasonable care to ensure that it is preserved for the purpose of evidence in criminal proceedings.

(7) Notwithstanding subsection (5), a Master may, on the application of a prosecutor or the

owner of anything seized under this section, order that—

- (a) a police photographer take photographs of the thing seized in the presence of a Justice of the Peace, the owner and, where practicable, the suspect;
- (b) the returns set out as Form 2 and Form 3 in Schedule 1 be duly completed and filed, together with the photographs, in the High Court; and
- (c) the thing seized be restored to its owner after the photographs and forms have been filed, and the photographs and forms shall be admissible as evidence of the thing seized.

(8) Where the owner or a suspect referred to in subsection (7)(a) refuses to sign the return set out as Form 3 in Schedule 1, the police photographer and the Justice of the Peace shall make a note of the refusal on the return and shall date and initial the form.

(9) Except as provided for under this Act or any other law, where anything seized under this section is no longer required for the

purpose of evidence in any criminal proceedings, the Master shall, whether or not the proceedings have been determined, direct the thing seized to be restored to the person from whom it was taken unless a written law authorizes or requires the disposition of the thing in a different manner.

(10) Where 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, is seized under this section, a Master may, if an indictment is not preferred, order the thing to be destroyed.

(11) Where the thing to be searched for under this section 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 the written law or, in default of such direction, by the Commissioner of Police.”.

5. Section 6 of the Act is amended—

Section 6 amended

- (a) in subsection (1)(b), by deleting the words “a warrant” and substituting the words “an arrest warrant”;

(b) by inserting after subsection (1), the following subsection:

“ (1A) A complaint shall be in the form set out as Form 4 in Schedule 1.”; and

Form 4
Schedule 1

(c) in subsection (3), by deleting the words “a warrant” and substituting the words “an arrest warrant”.

Section 7 amended

6. Section 7 of the Act is amended by inserting after subsection (8), the following subsection:

“ (9) A summons shall be in the form set out as Form 5 in Schedule 1.”.

Form 5 Schedule 1

Section 8 amended

7. Section 8 of the Act is amended—

(a) by repealing subsection (1) and substituting the following subsection:

“ (1) In determining whether to issue an arrest warrant, a Master shall consider—

(a) the nature and seriousness of the offence;

(b) the likelihood of the accused evading service of a summons;

(c) the character, antecedents, associations and social ties of the accused; and

(d) any other factor which appears to be relevant.”;

(b) in subsection (2), by deleting the words “A warrant under this section or section 6” and substituting the words “An arrest warrant”;

- (c) in subsections (3), (4) and (6), by deleting the words “a warrant” wherever they occur and substituting in each place the words “an arrest warrant”;
- (d) in subsection (5)—
- (i) by inserting after the words “a Master may”, the words “on oath taken before him by a complainant”;
 - (ii) by deleting the words “if he thinks fit,”; and
 - (iii) by deleting the words “a warrant” and substituting the words “an arrest warrant”.
- (e) by repealing subsection (7).

8. The Act is amended by inserting after section 8, the Section 8A inserted following section:

“Appearance before Magistrate 8A. (1) Where an accused charged with an offence triable only on indictment appears before a Magistrate under section 8(6), the Magistrate shall, after informing him of the charge, forthwith order that the accused be brought as soon as practicable before a Master to be dealt with in accordance with Part II.

(2) Where an accused charged with an either-way offence appears before a Magistrate under section 8(6), the Magistrate shall, after informing him of the charge—

- (a) order that the accused be brought as soon as practicable before a Master to be dealt with in accordance with Part II if the prosecutor informs the Magistrate that the case is to be tried on indictment; or

(b) proceed with a view to summary trial if the prosecutor informs the Magistrate that the case is to be dealt with summarily.

(3) Where a Magistrate makes an order under subsection (1) or (2)(a), the Magistrate shall, at the same time, order that any summary offence with which the accused is charged and which appears to the Magistrate to be related to the indictable offence referred to in subsection (1) or (2), be tried in the High Court together with the indictable offence.

(4) Where it appears to a Magistrate that an accused is charged with an either-way or summary offence which is related to an indictable or summary offence which has previously been the subject of an order under subsection (1), (2)(a) or (3), the Magistrate shall, where it is reasonably practicable to do so, order that the either-way or summary offence be tried in the High Court together with the indictable or summary offence.

(5) Where a Magistrate makes an order under subsection (1), (2)(a), (3) or (4), the Magistrate shall issue a notice to the Registrar specifying the offence or offences with which the accused has been charged and the Magistrate shall cause—

- (a) a copy of the notice to be served on the accused and filed in the High Court; and
- (b) a copy of each complaint to be filed in the High Court.

(6) Where an order is made under subsection (3) or (4), the Magistrate shall specify in the notice under subsection (5)—

- (a) the subsection under which the order is made; and
- (b) the offences which appear to the Magistrate to be related to each other.

(7) Where an order is made under subsection (1), (2)(a), (3) or (4), the accused shall appear before a Master on—

- (a) the next available session day as determined by the Registrar; or
- (b) such other session day as may, subject to the approval of the Registrar, be agreed between the accused and the prosecutor,

and for the purposes of this subsection, “session day” means a day on which the High Court sits or is to sit in accordance with the Supreme Court of Judicature Act.

(8) A Magistrate may grant an accused bail in accordance with the Bail Act or, subject to section 54(1) of the Children Act, remand him in custody by warrant in the form set out as Form 6 in Form 6 Schedule 1.

Schedule 1

(9) A Magistrate may adjourn the appearance of an accused before him under this section and the adjournment shall not, unless the accused and the prosecutor consent, be for longer than twenty-eight clear days.

(10) Where a Magistrate is satisfied that an accused who has been remanded is, by reason of illness, accident or other sufficient cause, unable to appear before him at an adjournment pursuant to subsection (9), the Magistrate may, in the absence of the accused, order him to be further remanded for no longer than twenty-eight clear days.”.

Section 9 amended

9. Section 9 of the Act is amended—

(a) by repealing subsection (1) and substituting the following subsection:

“ (1) A Master may, on issuing an arrest warrant, grant the accused bail in accordance with the Bail Act by endorsing the arrest warrant with a direction in accordance with subsection (2).”; and

(b) in subsections (2) and (3), by deleting the words “a warrant” and the words “the warrant” wherever they occur and substituting the words “an arrest warrant” and the words “the arrest warrant”, respectively.

Section 10 amended

10. Section 10 of the Act is amended—

(a) in subsection (1)—

- (i) by inserting after the word “Magistrates”, the words “and Clerks of the Peace”;
- (ii) in paragraph (c), by inserting after the words “summons or”, the words “an arrest”;
- (iii) in paragraph (d), by deleting the word “and” in the last place where it occurs; and

(iv) by inserting after paragraph (d), the following paragraph:

“(da) take recognisances; and”;

(b) by repealing subsection (2) and substituting the following subsections:

“ (2) Where a Magistrate or Clerk of the Peace issues a search warrant, he shall endorse it with a direction that anything seized be dealt with in accordance with section 5 and that a copy of any document which is required under section 5(3)(b) to be—

(a) delivered to a Master, be delivered to the Magistrate or Clerk of the Peace issuing the warrant, or where this is not practicable, to another Magistrate in the same Magisterial District; and

(b) filed in the High Court, be filed in a Summary Court,

within the period specified in that section.

(2A) Where a Magistrate or Clerk of the Peace issues an arrest warrant, he shall endorse it with a direction that the person arrested be brought before a Master to be dealt with in accordance with Part II, or where this is not practicable, before a Magistrate, to be dealt with in accordance with section 8A.”;

(c) in subsection (3)—

- (i) by inserting after the words “a Magistrate”, the words “or Clerk of the Peace”; and
- (ii) by deleting the words “the Magistrate” and substituting the word “he”; and

(d) by inserting after subsection (3), the following subsection:

“ (4) A Master or Magistrate may issue a summons or an arrest warrant in order to compel the appearance before a Master or Magistrate of any person accused of having committed in any place, whether within or outside of Trinidad and Tobago, any indictable offence triable according to law for the time being in force in Trinidad and Tobago.”.

Section 11 amended

11. Section 11 of the Act is amended—

(a) by repealing subsection (1) and substituting the following subsection:

“ (1) Subject to section 12, where an accused appears, or is brought, before a Master in accordance with Part I, the Master shall conduct an initial hearing with respect to any offence with which the accused is charged and which, is—

- (a) to be tried on indictment; and
- (b) a summary offence which appears to the Master to be related to an offence which is to be tried on indictment.”; and

(b) in subsection (2)(h)—

(i) by deleting the words “Schedule 1” and substituting the words “Schedule 1A”;

(ii) by inserting after subparagraph (ii), the following subparagraph:

“(ia) the police shall submit to the Director of Public Prosecution—

(A) the complaint;

(B) any account given by the accused in an interview or statement;

(C) any written statement of a witness or document exhibit;

(D) a list of any other exhibits;

(E) the accused’s criminal record; and

(F) any available statement of the effect of the offence on a victim, a victim’s family or any other person;”;

Section 12 amended

12. Section 12 of the Act is amended—

- (a) in subsection (1), by deleting the words “offence specified in Schedule 2 and the Director of Public Prosecutions” and substituting the words “either-way offence and the prosecutor”; and
- (b) in subsection (2), by deleting the words “or imprisonment” and substituting the words “and imprisonment”.

Section 13 amended

13. Section 13 of the Act is amended—

- (a) in subsection (1), by deleting the word “five” and substituting the word “ten”; and
- (b) by inserting after subsection (3), the following subsections:

“ (3A) Where an accused intends to rely on an alibi in his defence to a charge and he has not given particulars of the alibi to the Court pursuant to subsection (1), he shall within the period specified in subsection (1), serve on the Director of Public Prosecutions a notice of alibi in such form as is prescribed in the Rules of Court.

(3B) On trial on indictment, an accused shall not, without leave of the Court, adduce evidence of or in support of an alibi, unless he has previously given particulars of the alibi in accordance with subsection (1) or (3A).

(3C) Where the Court grants an accused person leave under subsection (3B) to adduce evidence of or in support of an alibi, the Court shall grant the prosecutor sufficient time to prepare to test the evidence.”.

14. Section 15 of the Act is amended by inserting after Section 15 amended subsection (2), the following subsection:

“ (3) Where a Master 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, upon such terms as he may think fit, the further hearing of the case.”.

15. Section 18 of the Act is amended by deleting the Section 18 amended words “Commissioner of Prisons” wherever they occur and substituting in each place the word “Keeper”.

16. Section 19 of the Act is amended— Section 19 amended

(a) by inserting after subsection (5), the following subsection:

“ (5A) Failure by an accused to file any documents under section 11(2)(h)(iv) within the time specified in the Scheduling Order shall not affect the power of a Master to proceed with and conclude a sufficiency hearing or to take any other action permitted by this Act.”; and

(b) in subsection (6), by deleting the word “initial” and substituting the word “sufficiency”.

17. Section 20 of the Act is amended— Section 20 amended

(a) in subsection (1), by deleting paragraph (b) and substituting the following paragraph:

“(b) before making an order under section 23 and on the application of either side, give the prosecutor or

the accused, as the case may be, an opportunity by way of submission orally or in writing, to show cause why the order should not be made.”; and

(b) by repealing subsection (3).

Section 21 amended

18. Section 21 of the Act is amended—

(a) in subsection (2)(d), by inserting after the word “was”, the words “, except in the case of a child under fourteen years of age,”;

(b) by inserting after subsection (3), the following subsection:

“ (3A) Notwithstanding section 91 of the Children Act, where a statement is made by a child under the age of fourteen years, 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.”;

(c) in subsection (4)—

(i) in paragraph (d), by deleting the word “and” in the last place where it occurs;

(ii) by inserting after paragraph (d), the following paragraph:

“(da) where the statement is made by a person who does not speak English,

his statement shall be taken through an interpreter and shall be—

(i) recorded on his behalf, read aloud and translated to him in English before he signs it or makes his mark thereon; and

(ii) 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; and”;

(d) by inserting after subsection (4), the following subsection:

“ (4A) For the purposes of subsection (4)(c), (d) and (da), the person who—

(a) records and reads the statement aloud to the person who cannot read or write under subsection (4)(c) or (d) respectively; or

(b) records, reads and translates the statement to the person who requires an interpreter under subsection (4)(da),

shall sign a declaration that the person mentioned in paragraph (a) or (b) understood what was written and confirmed that the statement was true and accurately reflected what he said.”.

Section 22 repealed
and substituted

19. Section 22 of the Act is repealed and the following section is substituted:

“Further
evidence

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

(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 Part II.”.

Section 23 repealed
and substituted

20. Section 23 of the Act is repealed and the following section is substituted:

“Final
decision on
sufficiency
hearing

23. After reviewing the evidence submitted by the prosecutor and the accused and considering submissions, if any, pursuant to section 20(1)(b), a Master may—

(a) discharge the accused pursuant to section 24;

(b) order that the accused be put on trial pursuant to section 25;
or

(c) make any other order in relation to the case, the charge or the accused as provided for in this Act or under any other written law.”.

21. Section 24(1) of the Act is amended by deleting the words “a *prima facie* case against the accused is not made out” and substituting the words “there is not sufficient evidence to put the accused on trial for any indictable offence”. Section 24 amended

22. Section 25 of the Act is amended— Section 25 amended

(a) in subsection (1), by deleting the words “a *prima facie* case is made out against the accused” and substituting the words “there is sufficient evidence to put the accused on trial”; and

(b) in subsection (2)—

(i) by deleting the words “a *prima facie* case”;

(ii) in paragraph (a), by deleting the words “is made out against the accused” and substituting the words “there is sufficient evidence to put the accused on trial”; and

(iii) in paragraph (b), by deleting the words “is not made out against the accused” and substituting the words “there is not sufficient evidence to put the accused on trial”.

23. The Act is amended by inserting after section 26, the following sections: Sections 26A to 26C inserted

“Use of certified copy of statements, etc.” 26A. Notwithstanding section 26(3) but subject to section 26(4), where the original statement or part thereof, or any document mentioned in that section is lost or destroyed, a copy of the statement or part thereof, or of the document duly certified by the Registrar or the Master who held the initial hearing or

sufficiency hearing, 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

26B. Where an order to put an accused on trial has been made, or an indictment has been filed in relation to an accused, 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, be given as fresh evidence at the trial.

DPP to refer
case to be
dealt with
summarily

26C. (1) If, after the receipt of the statements and other documents mentioned in section 26 or 26A, 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 to a Magistrate for summary trial.

(2) Where the Director of Public Prosecutions refers a case under subsection (1), 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.”.

24. Section 27(3) of the Act is amended—

Section 27 amended

- (a) in paragraph (b), by deleting the word “or”; and
- (b) by inserting after paragraph (b), the following paragraphs:
 - “(ba) where the accused is charged with an offence involving serious or complex fraud;
 - (bb) where a Magistrate was unable to complete a preliminary enquiry before the coming into force of this Act, or a Master is unable to complete a sufficiency hearing, because of his—
 - (i) physical or mental infirmity;

- (ii) resignation;
- (iii) retirement;
- (iv) death; or
- (v) inability for any other compelling reason,

and the evidence filed before the Master discloses, in the opinion of the Director of Public Prosecutions, sufficient evidence to put the accused on trial; or”.

Section 28 amended **25.** Section 28(1) of the Act is amended—

- (a) by inserting after the word “Master” in the last place where it occurs, the words “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) in paragraph (a), by deleting the word “shall” and substituting the word “may”;
- (c) in paragraph (b), by deleting the word “shall” and substituting the word “may”.

Sections 28A to 28E inserted **26.** The Act is amended by inserting after section 28, the following sections:

“Recording
answer of
accused

28A. (1) Where the accused person, in answer to the question referred to in section 28(1)(a), 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 Master, the accused and his Attorney-at-law and shall be kept with the statements of the witnesses.

(2) In any such case as mentioned in this section, the Master 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 Master shall, by his warrant, commit the accused 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) A statement of guilt made by an accused 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 Master 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 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

28B. (1) If an accused person who is committed for trial or sentencing is granted bail, the recognisance 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 Master, 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 recognisance shall be that the accused person shall personally appear before the Court at any time from the date of the recognisance 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 recognisance may be in the form set out in Schedule 4A.

Schedule 4A

Apprehension of accused on bail but about to abscond

28C. Where an accused person is granted bail under section 28B, a Master 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

28D. (1) Where an accused released on bail is subsequently indicted by the Director of Public Prosecutions for a non-bailable offence, a Master or 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 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.

(2) For the purposes of this section, a person is indicted when the indictment against him is filed in the High Court.

(3) Where an accused who is committed for trial has been released on bail and circumstances arise which, if the accused had not been admitted to bail, would justify refusing bail or requiring bail of greater amount, a Judge or Master 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, and, after giving the accused 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 Master may think just.

Place of
commitment

28E. All persons committed to prison under this Act shall be committed to such prison as is determined by the Commissioner of Prisons.”.

27. Section 30 of the Act is amended by repealing sub-section (7) and substituting the following subsections: Section 30 amended

“ (7) The Director of Public Prosecutions shall, at 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 an accused at the High Court.

Chap. 12:02

(8) The Registrar shall, on receipt of a notice under subsection (7), *subpoena* the witnesses in accordance with the procedure set out in section 17 of the Criminal Procedure Act.

(9) An accused 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.

(10) Every person committed for trial, whether granted bail 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 sufficiency hearing from the Registrar.”.

Section 31 amended

28. Section 31(1) of the Act is amended—

- (a) by inserting after the words “No person shall”, the words “, unless a Court directs otherwise,”;
- (b) by deleting in paragraph (a) and substituting the following paragraph:
 - “(a) the name, image, address and occupation of an accused who has attained the age of eighteen years or over;”;
- (c) in paragraph (b), by deleting the full stop and substituting the words “; and”; and
- (d) by inserting after paragraph (b), the following paragraph:
 - “(c) submissions on any point of law arising in the course of the sufficiency hearing, and the decision of the Master thereon.”.

29. The Act is amended by renumbering Schedule 1 as ^{Schedule 1 inserted} Schedule 1A and inserting after section 35, the following Schedule:

“SCHEDULE 1

FORM 1

[Section 5(4)]

REPUBLIC OF TRINIDAD AND TOBAGO

REPORT TO A MASTER IN RESPECT TO A SEARCH WARRANT ISSUED UNDER THE ADMINISTRATION OF JUSTICE (INDICTABLE PROCEEDINGS) ACT, 2011*

IN THE HIGH COURT OF JUSTICE
(CRIMINAL DIVISION)

To Master

I, (name, rank and regimental number of police officer) have in execution of a search warrant issued by you / (name of Master / Magistrate) on (date)

- 1. Searched (description of place) situated at (location of place);
and
- 2. Seized the following things:

Things seized
(Describe each thing seized)

(Date) (Signature of police officer)

A copy of this Report was served on the undersigned, being the owner / occupier of the place searched or a person from whom something was taken.

(Date) (Name, address, ID No. and Signature/Mark of Owner/Occupier/Person)

(Date) (Signature of police officer)

* To be completed in triplicate

FORM 2

[Section 5(7)]

RETURN OF PHOTOGRAPHER

I, (name, rank and number of regimental number of police officer) photographer did on (date) take (number) photograph(s) of (description of thing(s) seized) and the said photograph(s) was / were shown as numbers (numbers of exposures) on the photographic camera model / serial number (model and serial number of camera) which I used to take said photographs.

(Date)

(Signature)

FORM 3

[Section 5(7)]

RETURN OF WITNESS TO TAKING OF PHOTOGRAPHS

I, (name of person) of (address of person) was jointly present with (names of Justice of the Peace, Owner and Suspect as applicable) on (date) at (place) and witnessed the taking of (number) photograph(s) of (description of thing(s) seized) by (name, rank and regimental number of police photographer).

(Date)

(Name, address, ID No. and
Signature / Mark of Witness)

(Date)

(Name, address, signature and
seal of Justice of the Peace)

FORM 4

[Section 6(1A)]

REPUBLIC OF TRINIDAD AND TOBAGO

COMPLAINT WITHOUT / UPON OATH
INDICTABLE OFFENCE

IN THE HIGH COURT OF JUSTICE (CRIMINAL
DIVISION) / MAGISTERIAL DISTRICT OF

A.B. Complainant

v.

C.D. Accused

The complaint of A.B. of [address] who said without oath / on this
oath / affirmation that C.D., of [address] (1)

.....

.....
Signature of Complainant

*[Taken before me this day of, 20...at

.....
(Master / Magistrate / Clerk of the Peace)]

(1) State concisely the substance of the complaint.

* Delete if complaint is without oath

FORM 5

[Section 7(9)]

REPUBLIC OF TRINIDAD AND TOBAGO

SUMMONS TO ACCUSED ON COMPLAINT

IN THE HIGH COURT OF JUSTICE (CRIMINAL
DIVISION) / MAGISTERIAL DISTRICT OF

A.B. Complainant

v.

C.D. Accused

To C.D. of [address]

Whereas complaint has this day been made before me, the undersigned Master [or Magistrate / Clerk of the Peace for the District], for that you (1) This is to command you to be and appear at o'clock m., on theday of, 20....., at Before [Master / Magistrate] to be further dealt with according to law.

Dated this day of, 20.....

(Signed)
(Master / Magistrate / Clerk of the Peace)

(1) State concisely the substance of the complaint

FORM 6

[Section 8A(8)]

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 this day of , 20.....

at

.....
Magistrate”.

30. The Act is amended by inserting after Schedule 4, Schedule 4A inserted the following Schedule:

“SCHEDULE 4A

[Section 28B(3)]

RECOGNISANCE 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 Thousandof 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 of to 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 recognisance 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 recognisance or obligation.

Acknowledged by the saidon the day of 20.....

Witness.....

Before me,

.....
(Master)".

Passed in the House of Representatives this day
of , 2018.

Clerk of the House

I confirm the above.

Speaker

35

Passed in the Senate this day of , 2018.

Clerk of the Senate

I confirm the above.

President of the Senate

No. 20 of 2018

FOURTH SESSION
ELEVENTH PARLIAMENT
REPUBLIC OF
TRINIDAD AND TOBAGO

BILL

AN ACT to amend the Administration of
Justice (Indictable Proceedings) Act,
2011 (Act No. 20 of 2011)

Received and read the

First time.....

Second time.....

Third time.....
