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No. 28 of 2019

Fifth Session Eleventh Parliament Republic of
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) (NO. 3) BILL, 2019

Explanatory Notes

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

The Bill seeks the Administration of Justice (Indictable Proceedings) Act, 2011 (Act No. 20 of 2011) (“the Act”) which provides for the abolition of preliminary enquiries and for the conduct of initial and sufficiency hearings by a Master of the High Court.

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

Clause 2 of the Bill would provide for the definition of the words “the Act”, being the Administration of Justice (Indictable Proceedings) Act, 2011.

Clause 3 of the Bill would extend the definitions of “arrest warrant” and “search warrant” to include similar warrants issued under any other written law. The definitions of “documentary exhibit” and “summons” would be amended and the definition of “Minister” would be inserted.

Clause 4 of the Bill would amend section 4(1) of the Act to clarify the intention that the Act would apply to unfinished preliminary enquiries referred to in section 6(3)(d) of the Act.

Clause 5 of the Bill would amend section 5 of the Act by expressly providing for aircraft to be searched pursuant to a search warrant and for any constable executing a search warrant to be accompanied by other persons. A new subsection (1A) would be inserted to enable a Master of the High Court to issue a search warrant that authorises the search of one or more sets of premises specified in the warrant or any premises occupied or controlled by a person specified in the warrant. Additionally, it would be possible for a search warrant to authorise the search of premises on more than one occasion if the Master is satisfied that it is necessary to authorise multiple searches in order to achieve the purpose for which the search warrant is issued. The number of searches authorised by a search warrant may be unlimited or limited to a

specified number of searches. A new subsection (2A) would require a constable who is executing a search warrant to identify himself to the occupier of the premises, if the occupier is present at the time, and to provide the occupier with a copy of the search warrant. Subsection (7) would be repealed and replaced by new subsections (6A), (6B) and (7) which would allow photographs, digital recordings or other images of things seized to be admissible as sufficient evidence of the things seized and facilitate the early restoration of things seized to their owners.

Clause 6 of the Bill would repeal and replace section 6(1) of the Act to enable a Master to issue a summons whether the complaint is without oath or on oath and to remove the provision for the mandatory issuance of an arrest warrant where a complaint is on oath. An arrest warrant would, however, only be issued where the complaint is on oath. Further, a complaint would be required to be in the new Form 4 which would be inserted in Schedule 1.

Additionally, section 6(3)(b) of the Act allows the Director of Public Prosecutions to file an indictment in respect of a co-accused where the accused has been indicted and the co-accused is arrested before the arraignment of the accused. Section 6(3)(b) of the Act would, however, be amended to allow the indictment to be filed at any time before the trial of the accused begins.

Clause 7 of the Bill would repeal and replace subsection (8) of section 7 of the Act to allow for proof of service of a summons to be made, principally, by an affidavit made by the constable who served the summons. This would eliminate the need for the constable who served the summons to attend court to prove service of the summons. The Master would, however, be able to order that the constable appear before him to prove the service, if he thinks the constable's attendance is necessary.

Clause 8 of the Bill would amend section 8 of the Act in subsection (7) to require a person who is arrested and charged with an indictable offence to be brought before a Master as soon as practicable after he is charged, instead of as soon as practicable after he is arrested. A new subsection (7A) would require a charge for an indictable offence to be in the new Form 4 which would be inserted in Schedule 1.

Clause 9 of the Bill would amend section 8A(7) of the Act by deleting the word "session" in the term "session day" and by deleting the definition of "session day".

Clause 10 of the Bill would amend section 10 of the Act to empower the Registrar of the Supreme Court to exercise the same concurrent jurisdiction that Magistrates and Magistracy Registrars and Clerks of the Court exercise with Masters.

Clause 11 of the Bill would amend section 11(2)(h) of the Act to allow Masters to extend, in their own discretion, the statutory deadlines applicable to Scheduling Orders. A similar adjustment would also be made in respect of subsection (5), thereby removing the provision for one extension not exceeding fourteen days and enabling the various parties at an initial hearing to obtain such extension as the Master thinks fit for the purposes of facilitating compliance with a Scheduling Order. This clause would also insert a new subsection (6) that would permit the filing of electronic documents.

Clause 12 of the Bill would amend section 12 of the Act by repealing subsection (3) which disapplies the maximum penalty under subsection (2) where a person is summarily convicted of the indictable offence of kidnapping.

Clause 13 of the Bill would amend section 19 of the Act to require a Master to determine at a sufficiency hearing whether there is sufficient evidence to establish a *prima facie* case of any indictable offence and to empower a Master to determine when a sufficiency hearing would not be held in open court.

Clause 14 of the Bill would amend section 20 of the Act to eliminate the necessity of producing in court any original exhibit or statement unless the prosecution elects to do so or the Master determines otherwise in the interest of justice. The witness statements and other documentary evidence filed by the prosecutor would be required to disclose sufficient evidence to establish a *prima facie* case that an indictable offence has been committed and that the accused committed it. New subsections (5) and (6) would be inserted to facilitate the production and marking of electronic copies of exhibits and the tendering of photographs, digital recordings and other images of exhibits as evidence of those exhibits. Further, a new subsection (7) would require a Master to maintain a list of all exhibits relied on by either the prosecution or the defence and to sign the list at the conclusion of the sufficiency hearing.

Clause 15 of the Bill would amend section 21 of the Act. Subsection (2) would be amended to reduce the age of children who are permitted to give unsworn statements from under

fourteen years to under ten years. Additionally, subsection (8) would be amended to allow transcripts of proceedings before the High Court to be admissible as evidence at a sufficiency hearing.

Clause 16 of the Bill would amend section 24 of the Act to require an accused to be discharged where the Master finds that there is not sufficient evidence to establish a *prima facie* case of any indictable offence. Provision would also be made for the Director of Public Prosecutions to make an *ex parte* application to a Judge for a warrant to arrest an accused who has been discharged, which would be followed by an *inter partes* hearing of the application to put the accused on trial. A Judge would order that the accused be put on trial if the Judge is of the opinion that there was sufficient evidence to establish a *prima facie* case of any indictable offence.

Clause 17 of the Bill would amend section 25 of the Act to require a Master to find that there is sufficient evidence to establish a *prima facie* case of an indictable offence before he orders that the accused be put on trial.

Clause 18 of the Bill would amend section 26B of the Act to allow additional relevant evidence, as opposed to additional evidence of a material nature, to be given as fresh evidence at a trial.

Clause 19 of the Bill would amend section 26C of the Act to allow the High Court to exercise certain powers where the Director of Public Prosecutions refers for summary trial, the case of an accused who has been committed for trial in the High Court.

Clause 20 of the Bill would amend section 29 of the Act to allow for the production of electronic copies of exhibits and documentary evidence of any witness at sufficiency hearings and at trials. The Court would, however, have the power to direct that the original document or a copy thereof be tendered in evidence in the interests of justice.

Clause 21 of the Bill would amend section 30(5)(c) of the Act to allow a Master to bind over a witness to attend the trial conditionally upon notice and not otherwise where the evidence of the witness is not in dispute, as opposed to being merely of a formal nature.

Clause 22 of the Bill would amend the Act by inserting after section 33, a new section 34. This new section would allow the Chief Justice to amend any form in Schedule 1, 1A, 3, 4, 5 or 7 of the Act by Practice Direction.

Clause 23 of the Bill would amend Schedule 1 of the Act by deleting and substituting Forms 2, 3 and 4.

Clause 24 of the Bill would amend Schedule 8 of the Act to provide for the consequential amendment of the Evidence Act, Chap. 7:02, by repealing section 14B of that Act.

BILL

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

[, 2019]

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) (No. 3)
Act, 2019.

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(1) of the Act is amended—

(a) in the definition of “arrest warrant”, by inserting after the words “or 8”, the words “or any other written law”;

(b) in the definition of “documentary exhibit”, by inserting after the word “printout”, the words “, digital file in any format contained in any device”;

c) by inserting after the definition of “Master”, the following definition:

“Minister” means the Minister with responsibility for the criminal justice system;”;

d) in the definition of “search warrant”—

(i) by inserting after the words “a warrant”, the words “for the conduct of a search”; and

(ii) by inserting after the words “section 5(1)”, the words “or any other written law”; and

(e) in the definition of “summons”, by deleting words “section 6(a)” and substituting the words “section 6”.

Section 4 amended

4. Section 4(1) of the Act is amended by inserting after the words “subsection (2)”, the words “and section 6(3)(d)”.

Section 5 amended

5. Section 5 of the Act is amended—

(a) in subsection (1)—

(i) by deleting the word “ship” in both places where it occurs and

substituting in each place the word “aircraft”;

(ii) by inserting after the word “constable”, the words “or any person accompanying him”;

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

“ (1A) A search warrant may authorise the search of—

(a) one or more sets of premises specified in the warrant; or

(b) any premises occupied or controlled by a person specified in the warrant if the Master is satisfied that—

(i) because of the particulars of the indictable offence referred to in subsection (1), there are reasonable grounds for suspecting that it is necessary to search premises occupied or controlled by the person in question which are not specified in the application for the search

warrant in order to find anything referred in paragraphs (a) to (c) of subsection (1);

- (ii) it is not reasonably practicable to specify in the application for the search warrant all the premises which the person in question occupies or controls and which might need to be searched.

(1B) A search warrant may authorise the search of premises on more than one occasion if the Master is satisfied that it is necessary to authorise multiple searches in order to achieve the purpose for which the search warrant is issued.

(1C) Where a search warrant authorises multiple searches, the number of searches authorised may be unlimited or limited to a maximum specified in the search warrant.”.

- (c) by inserting after subsection (2), the following subsection:

“ (2A) Where the occupier of any place which is to be searched is present at the time when a constable seeks to execute a search warrant, the constable shall—

(a) identify himself to the occupier and, if not in uniform, shall produce to him documentary evidence that he is a constable;

(b) produce the search warrant to the occupier; and

(c) supply the occupier with a copy of the search warrant.”;

(d) by inserting after subsection (6), the following subsections:

“ (6A) Notwithstanding subsection (5), where anything is seized under this section the Commissioner of Police may, instead of causing it to be detained, cause photographs, digital recordings or other images of the thing to be taken in the presence of a Justice of the Peace, a constable and, where practicable, the suspect or his authorised representative.

(6B) Where photographs, digital recordings or other images are taken under subsection (6A)—

(a) the returns set out in Form 2 and Form 3 in Schedule 1 shall be duly completed and the

photographs, digital recordings or other images and the returns shall be admissible as sufficient evidence of the thing seized; and

(b) the thing seized may be restored to its owner.”; and

(e) by repealing subsection (7) and substituting the following subsection:

“ (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) photographs, digital recordings or other images of the thing seized be taken in the presence of a Justice of the Peace, the owner and, where practicable, the suspect or his authorised representative;

(b) the returns set out as Form 2 and Form 3 in Schedule 1 be duly completed and filed, together with the photograph, digital recording or other image, in the High Court; and

(c) the thing seized may be restored to its owner

after the photograph, digital recording or other image, and the returns have been filed, and the photograph, digital recording or other image, and the returns, shall be admissible as sufficient evidence of the thing seized.”;

(f) in subsection (9), by inserting after the words “or requires”, the words “the retention of the thing or”.

6. Section 6 of the Act is amended—

Section 6 amended

(a) by repealing subsections (1) and (1A) and substituting the following subsections:

“ (1) Where a complaint in writing is made to a Master that an indictable offence has been committed by an accused, the Master may, if he is satisfied that there are reasonable grounds that an indictable offence has been committed, issue a summons or an arrest warrant to compel the appearance of the accused before him.

(1A) An arrest warrant shall only be issued where the complaint is on oath.

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

(b) in subsection (3)(b), by deleting the word “arraignment” and substituting the word “trial”.

Section 7 amended

7. Section 7 of the Act is amended by repealing subsection (8) and substituting the following subsection:

“ (8) The Master, before whom an accused is required to appear in accordance with a summons may receive proof of the service of the summons, by an affidavit made by the constable who served the summons, but the Master may, if he thinks fit, order that the constable appear before him to prove the service.”.

Section 8 amended

8. Section 8 of the Act is amended—

(a) in subsection (7), by deleting the word “arrested” in the second place where it occurs and substituting the word “charged”; and

(b) by inserting after subsection (7), the following subsection:

“ (7A) A charge for an indictable offence shall be in the form set out as Form 4 in Schedule 1.”.

Section 8A amended

9. Section 8A(7) of the Act is amended—

(a) by deleting the word “session” occurring in paragraphs (a) and (b);

(b) in paragraph (b), by deleting the words “prosecutor,” and substituting the words “prosecutor.”; and

(c) by deleting the words “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.”.

Section 10 amended

10. Section 10 of the Act is amended—

(a) in subsection (1)—

(i) by inserting after the words “this Act,”, the words “the Registrar.”;

- (ii) in paragraph (a), by deleting the words “pursuant to section 5”;
 - (iii) in paragraph (c), by deleting the words “pursuant to section 6 or 8, as the case may be”;
- (b) in subsection (2)—
- (i) by inserting after the word “Where”, the words “the Registrar or”;
 - (ii) paragraph (a), by inserting after the words “to the”, the words “Registrar.”;
- (c) in subsections (2A) and (3), by inserting after the word “Where”, the words “the Registrar or”; and
- (d) in subsection (4), by deleting the words “or Magistrate” and substituting the words “, the Registrar or a Magistrate or Magistracy Registrar and Clerk of the Court”.

11. Section 11 of the Act is amended—

Section 11 amended

- (a) in subsection (2)(h)—
- (i) in subparagraph (iii), by inserting after the word “Order”, the words “or such longer period as the Master thinks fit”;
 - (ii) in subparagraph (iv), by inserting after the words “subparagraph (iii)”, the words “or such longer period as the Master thinks fit”;
 - (iii) in subparagraph (v), by inserting after the words “twenty-eight days”, the words “, or such longer period as the Master thinks fit.”;

- (b) in subsection (5), by deleting the words “no more than one extension not exceeding fourteen days to the applicant” and substituting the words “such extension as he thinks fit”; and
- (c) by inserting after subsection (5), the following subsection:

“ (6) Anything required to be filed pursuant to subsection (2) may be filed electronically.”.

Section 12 amended **12.** Section 12 of the Act is amended by repealing subsection (3).

Section 19 amended **13.** Section 19 of the Act is amended—

- (a) in subsection (1), by deleting the words “to put the accused on trial for an” and substituting the words “to establish a *prima facie* case of any”; and
- (b) in subsection (2), by inserting after the word “provide”, the words “, or the Master determines,”.

Section 20 amended **14.** Section 20 of the Act is amended—

- (a) in subsection (1)(a), by inserting after the word “accused”, the words “and—
 - (i) no original exhibit or statement needs to be produced to the Court unless the prosecution elects to do so or the Master rules that it is in the interest of justice so to do; and
 - (ii) copy exhibits may be produced to the Court in any electronic format”;
- (b) in subsection (2), by inserting after the words “sufficient evidence”, the words “to establish a *prima facie* case”; and

(c) by inserting after subsection (4), the following subsections:

“ (5) At a sufficiency hearing, an exhibit referred to in a witness statement shall be taken to have been produced before the Master and marked if an electronic copy is given, and the Master shall mark the device containing the electronic copy of the exhibit for identification in relation to its relevant witness statement.

(6) Notwithstanding subsections (4) and (5), the court may permit a photograph, digital recording or other image of an exhibit to be tendered in Court as evidence of the exhibit.

(7) A list of all exhibits relied on by either the prosecution or the defence shall be maintained by the Court and signed by the Master at the conclusion of the sufficiency hearing.”.

15. Section 21 of the Act is amended—

Section 21 amended

- (a) in subsection (2)(d), by deleting the word “fourteen” and substituting the word “ten”; and
- (b) in subsection (8), by inserting after the words “Coroner,”, the words “the High Court,”.

16. Section 24 of the Act is amended—

Section 24 amended

- (a) in subsection (1), by deleting the words “to put the accused on trial for” and substituting the words “to establish a *prima facie* case of”;

(b) in subsection (4), by deleting the words “Judge for a warrant for arrest of the accused and for an order to put the accused on trial.” and substituting the following:

“Judge for—

(a) a warrant for the arrest of the accused; and

(b) an order to put the accused on trial.”;

(c) in subsection (5), by inserting after the words “A request”, the words “for the record of the proceedings”;

(d) in subsection (6), by deleting the words “under subsection (4) shall be *ex parte* and” and substituting the words “for a warrant under subsection (4) shall be made *ex parte* and”;

(e) in subsection (7)—

(i) by deleting the words “is made under subsection (4)” and substituting the words “for a warrant under subsection (4) is granted”; and

(ii) in paragraph (a), by inserting after the words “hearing of the application”, the words “for an order”; and

(f) in subsection (9), by deleting the words “to put the accused on trial” and substituting the words “to establish a *prima facie* case of any indictable offence”.

Section 25 amended

17. Section 25 of the Act is amended by deleting the words “to put the accused on trial for” wherever they occur and substituting in each place the words “to establish a *prima facie* case of”.

18. Section 26B of the Act is amended by deleting the words “evidence of a material nature” and substituting the words “relevant evidence”. Section 26B amended

19. Section 26C of the Act is amended— Section 26C amended

(a) in subsection (1), by deleting the words “to a Magistrate”;

(b) in subsection (2)—

(i) in paragraph (a), by deleting the words “under his hand”;

(ii) in paragraph (c), by deleting the word “himself” and substituting the word “itself”; and

(c) in subsections (2) and (3), by deleting the word “Magistrate”, wherever it occurs and substituting in each place, the word “Court”.

20. Section 29 of the Act is amended by inserting after subsection (7), the following subsection: Section 29 amended

“ (8) The production of electronic copies of exhibits and documentary evidence referred to by any witness who is called or whose statement is read, shall be sufficient evidence of the same at sufficiency hearings and at trial unless the Court directs that the original or a copy thereof be produced in the interests of justice.”

21. Section 30(5)(c) of the Act is amended by deleting the words “being merely of a formal nature” and substituting the words “is not in dispute”. Section 30 amended

22. The Act is amended by inserting after section 33, the following section: Section 34 amended

“Amendments of forms **34.** The Chief Justice may, by Practice Direction, amend any form contained in Schedule 1, 1A, 3, 4, 5 or 7.”.

Schedule 1 amended

23. Schedule 1 of the Act is amended—

(a) by deleting Forms 2 and 3 and substituting the following form:

“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)/digital recording(s)/image(s) of (description of thing(s) seized) and the said photograph(s)/digital recording(s)/image(s) was/were shown as numbers (numbers of exposures) on the photographic camera model/serial number (model and serial number of camera)/device which I used to take said photograph(s)/digital recording(s)/ image(s).

(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)/digital recording(s)/image(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)

(b) by deleting Form 4 and substituting the following form:

“FORM 4

[Section 6(1A) and 8(7A)]

REPUBLIC OF TRINIDAD AND TOBAGO

COMPLAINT WITHOUT OR UPON OATH/CHARGE
FOR AN INDICTABLE OFFENCE

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

Name of Complainant: The State/Commissioner of
Police/Comptroller of Customs/Other

v.

Name of Accused:

Name of Offence:

Description of Offence: (1)

Signature of Complainant:

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

.....
*(Master / Magistrate / [Senior] Magistracy Registrar
and Clerk of the Court)*

(1) State concisely the substance of the complaint.

* Delete if complaint is without oath

24. Item 4 of Schedule 8 of the Act is amended in the Schedule 8 amended Second Column by inserting after paragraph B, the following paragraph:

“ C. Repeal section 14B.”.

Passed in the House of Representatives this day
of , 2019.

Clerk of the House

I confirm the above.

Speaker

Passed in the Senate this day of , 2019.

Clerk of the Senate

I confirm the above.

President of the Senate

No. 28. of 2019

FIFTH 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.....
