



THE PARLIAMENT OF  
TRINIDAD AND TOBAGO

## BILL ESSENTIALS

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Links: The links to the Bill, and its progress can be found on the Bill's home page through the Parliament's Website

<https://www.ttparliament.org/publication/the-administration-of-justice-indictable-proceedings-amendment-bill-2023/>

# BILL ESSENTIALS

BILL ESSENTIALS NO. 9 of 2022-2023





3<sup>rd</sup> SESSION, 12<sup>th</sup> PARLIAMENT

## ADMINISTRATION OF JUSTICE (INDICTABLE PROCEEDINGS) (AMENDMENT) Bill, 2023

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## BACKGROUND

1. **The Administration of Justice (Indictable Proceedings) (Amendment) Bill, 2023 (“the Bill”)** was introduced in the House of Representatives on May 10, 2023 by *Senator the Honourable Reginald Armour S.C., Attorney General* and aims to amend the Administration of Justice (Indictable Proceedings) Act, 2011 (“the Act”).
2. The Act provides for the abolition of preliminary enquiries and for the conduct of initial and sufficiency hearings by a Master of the High Court.
3. The Bill has been previously amended by:
  -  Administration of Justice (Indictable Proceedings) (Amendment) Act, 2012<sup>1</sup>;
  -  Administration of Justice (Indictable Proceedings) (Amendment) Act, 2019<sup>2</sup>;
  -  Administration of Justice (Indictable Proceedings) (Amendment) (No. 2) Act, 2019<sup>3</sup>;
  - and
  -  Administration of Justice (Indictable Proceedings) (Amendment), 2020<sup>4</sup>
4. The Bill will come into effect on such date as fixed by the President by Proclamation.

## KEY FEATURES OF THE BILL

### AMENDED SECTIONS

#### Amendments to Definitions

5. **Clause 4** of the Bill inserts new definitions into the Act, including:
  -  **“alibi”** means evidence in relation to an alleged offence which seeks to show that by reason of the presence of the accused at a particular place or in a particular area at a particular time, the accused was not, or was unlikely to have been, at the place where the offence is alleged to have been committed at the time the offence is alleged to have been committed;
  -  **“audio recording”** means an audio recording on a non-rewritable recording medium identifying the persons speaking;




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<sup>1</sup> <https://www.ttparliament.org/publication/the-administration-of-justice-indictable-proceedings-amendment-act-2012/>

<sup>2</sup> <http://news.gov.tt/sites/default/files/E-Gazette/Gazette%202019/Acts/Act%20No.%203%20of%202019.pdf>

<sup>3</sup> <http://news.gov.tt/sites/default/files/E-Gazette/Gazette%202019/Acts/Act%20No.%2011%20of%202019.pdf>

<sup>4</sup> <https://www.ttparliament.org/publication/the-administration-of-justice-indictable-proceedings-amendment-act-2020/>



-  **“marked”** means the act by which documents, articles, items, and other forms of evidence, including those in an electronic format, are entered into the record of court proceedings as evidence and involves annotating, highlighting, writing, or assigning a reference on a document, article or item or otherwise marking on the document or item;
-  **“video”** in relation to a recorded statement or recorded evidence, means any recording on any medium from which a moving image may by any means be produced or transmitted, whether or not accompanied by a sound track; and
-  **“warrant of apprehension”** means a warrant, not being an arrest warrant to compel the appearance of the accused for the purposes of an initial hearing.

6. **Clause 4** will also replace the definition of **“prison”** to distinguish between the detention of adults and children. Consequently, **“prison”** in relation to a child will now mean a Rehabilitation Centre as defined in or designated under the *Child Rehabilitation Centre Act Chap. 13:05*.

### Filing of Indictments

7. Proposed amendments via **clause 4** will also permit electronic filing under the Act and provide that the provisions of the *Criminal Procedure Act Chap 12:02* will apply to the form and content of an indictment under the Act.

### Powers of a Magistrate

8. **Clause 5** of the Bill repeals section 4(2) and 4(3) of the Act. The new provisions provide that if legal proceedings were commenced before the enactment of the legislation, a Magistrate will be empowered to decide if the case should continue under the old law or the new law. This decision will be made after hearing from both the prosecutor and the accused, and only if it is determined to be in the interest of justice and fairness to the parties. However, the proposed amendment also imposes limitations on the Magistrate's power to continue under the new law in two circumstances:
  -  if there is a joint trial involving multiple accused persons; and
  -  if there are multiple charges against the accused and all of them are being tried together.





## Report on Search Warrant

9. The proposed amendment in **Clause 6** allows a constable, upon the execution of a search warrant, to file a report of anything seized in the High Court within 14 days.

## Search Warrants for the acquisition of Data

10. **Clause 7** of the Bill would allow for provisions in sections 13 and 14 of the *Interception of Communications Act Chap 15:08* to apply when a search warrant is issued under the Act to acquire data. These provisions require certain persons and entities to provide information, facilities and technical assistance when a warrant is issued and ensures the confidentiality of intercepted communications.

## Institution of Indictable proceedings and compelling appearance of accused

11. The new provisions outlined in **Clause 8** set out the procedure for initiating indictable proceedings and compelling the appearance of an accused.
12. The amendment in **clause 8** also outlines the process where the complaint is in respect of an accused who is a child or it is a children charge matter and introduces new provisions that would allow the Director of Public Prosecutions to file an indictment in circumstances where a Preliminary Enquiry or sufficiency hearing is not completed, and the offence involves violence or sexual misconduct. Such circumstances may also include:
  -  violent, sexual and/or human trafficking offences;
  -  where the accused or witness is a child;
  -  where an adult witness was murdered or subject to violence, threats or intimidation; or
  -  where a witness or an alleged victim of the offence is not resident in Trinidad and Tobago.

## Notice of complaint to the Director of Public Prosecution

13. **Clause 9** of the Bill empowers a Master to provide a notice of complaint to the Director of Public Prosecutions in circumstances where a complaint is made (either on oath or without oath) by someone other than a Police Officer.

## Discretionary power of Master to issue summons removed

14. **Clause 10** of the Bill repeals section 7(7) of the Act, which removes the discretionary power of the Master to issue a summons for the appearance of the accused where there is a possibility of the accused fleeing Trinidad and Tobago<sup>5</sup>.

## Issuance of Arrest Warrant

15. The amendment to **Clause 11** introduces a new provision that empowers a Master to issue an arrest warrant if they believe that the accused is likely to flee Trinidad and Tobago.



16. **Clause 11** also removes the option of appearance of an accused before a Magistrate.

## Concurrent Jurisdiction

17. **Clause 13** of the Bill removes the power of Magistrates, Magistracy Registrars, and Clerks of the Court to exercise concurrent jurisdiction on matters for which a Master has jurisdiction under the Act.

## Jurisdiction of Children Court

18. **Clause 14** of the Bill grants the Children Court the power to exercise jurisdiction on the following:

-  a children matter defined under section 3 of the *Family and Children Division Act, 2016*<sup>6</sup>; and
-  a matter to which a process, program, rule, procedure, restriction, supervision, or measure is outlined in the *Family and Children Division Act, 2016*.

## Procedure for Notice of Alibi

19. **Clause 17** of the Bill provides a procedure for the Master to treat with an accused person who has raised an alibi. This clause would also introduce a new requirement for the accused to serve a notice of alibi on the Director of Public Prosecutions within a designated time and identifies the particulars required in the notice.

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<sup>5</sup> This discretionary power is now included in the proposed amendment for Section 8 of the Act.

<sup>6</sup> <https://www.ttparliament.org/wp-content/uploads/2022/01/a2016-6.pdf>

## Remand of the Accused

20. **Clause 19** of the Bill seeks to broaden the circumstances in which a Master can order the further remand of an accused person who is absent at an adjournment via the insertion of the words “*or any other reason*”.

## Sufficiency Hearing



21. The proposed amendment in **clause 20** of the Bill provides that that a *prima facie* case must be established in the determination of a sufficiency hearing and establishes a new procedure for the adjournment of a sufficiency hearing.

## Witness and Witness Statements

22. **Clause 21** of the Bill removes the requirement for a witness to attend a sufficiency hearing, unless he is ordered to do so by a Master. Additionally, a recognisance<sup>7</sup> in the form provided in Schedule 7 is required to be included in any witness statement submitted by either the prosecution or the accused.

## Admissibility of Prosecution Witness Statements

23. **Clause 23** of the Bill amends the conditions required for the admissibility of the witness statement to consider:

-  exceptions relating to children younger than ten; and
-  audio and video recordings in compliance with the *Evidence Act Chap.7:02* and the Judges Rules<sup>8</sup>.

24. Furthermore, the clause expands the requirements for recording a statement from a non-English speaker.

## Final decision on Sufficiency Hearing



25. **Clause 24** of the Bill empowers a Master to:

-  discharge an accused pursuant to section 24;

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<sup>7</sup> a bond by which a person undertakes before a court or magistrate to observe some condition, especially to appear when summoned.

<sup>8</sup> <https://www.ttlawcourts.org/attachments/article/11952/Judges'%20Rules%201978.pdf>

-  make an order, under section 25, that any indictable offence on the indictment, be dealt with by the High Court in accordance with the Criminal Procedure Act; or
-  make any other order in relation to the case, the indictment or the accused as provided for in this Act or under any other written law.

### Discharge of Accused

26. **Clause 25** of the Bill provides for the discharge of an accused where there is insufficient evidence for a trial for any indictable offence on the indictment.
27. This clause will also allow the Director of Public Prosecutions to appeal against the discharge of the accused by a Master, and provide for the appeal to be made to the Court of Appeal<sup>9</sup>.

### Dealing with offence under the Criminal Procedure Act Chap. 12:02

28. **Clause 26** of the Bill provides that a Master must determine that there is sufficient evidence to establish a *prima facie* case against the accused. Consequently, a Master can order the indictable offence to be treated by the High Court according to the *Criminal Procedure Act Chap. 12:02* and have the indictment amended accordingly.

### Transmission and custody of documents and exhibits

29. **Clause 27** of the Bill expands the obligations of the Master in providing documentation to the Director of Public Prosecutions after a *prima facie* case has been determined.

### Admission of guilt by accused

30. **Clause 32** of the Bill removes the exceptions of treason or murder for admitting guilt at a sufficiency hearing and increases the period to appear for sentencing from twenty-eight (28) days to three (3) months.

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<sup>9</sup> In accordance with section 65C of the Supreme Court of Judicature Act.

### Recording answer of accused

31. **Clause 33** of the Bill amends section 28A to provide that after an admission of guilt by an accused has been properly recorded a Master must order that the accused person be referred to a Judge for sentencing without a trial.

### Power to revoke or require higher bail

32. **Clause 35** of the Bill removes the power of a Master or Magistrate to issue an arrest warrant and commit an accused person who was indicted for a non-bailable offence whilst already released on bail.

### Admissibility of witness statements at trial

33. **Clause 36** of the Bill permits the use of a witness statement admitted as evidence at a sufficiency hearing, in the trial of an accused where the witness is out of the jurisdiction. A credible witness is required by oath to prove that the original witness is located outside of Trinidad and Tobago and cannot attend physically or electronically to give evidence at trial.

### Attendance of witnesses

34. **Clause 37** of the Bill requires the Master to inform the accused of certain formalities required to ensure his attendance and the attendance of any of his witnesses at trial.

35. Additionally, the names, places of abode and contact information of the witnesses on behalf of the accused must be submitted to the Registrar of the High Court.

### Transitional Provisions

36. **Clause 38** of the Bill provides that any depositions taken, exhibits admitted and other documents or evidence tendered, submitted or filed in proceedings started under the former Act can be used as evidence in a sufficiency hearing.

### Anonymization of documents

37. **Clause 39** of the Bill introduces a new section 32B to address the anonymization of any documents that are filed or issued under the Act, and it would require records of such anonymization to be kept in certain circumstances.

## Savings Clause

38. **Clause 40** of the Bill amends section 33(2) which enables the preservation of existing procedures under the *Indictable Offences (Preliminary Enquiry) Act Chap. 12:01*. The clause will now read:

*“Notwithstanding subsection (1), the Indictable Offences (Preliminary Enquiry) Act shall continue to apply to proceedings which were instituted prior to the coming into force of this Act where no order is made under section 32A.”*

## SECTIONS REPEALED

### Appearance of Accused before Magistrate

39. **Section 8A** of the Act is repealed, which removes provisions made for the appearance of an accused before a Magistrate and its related procedures.

### Use of certified copy of statements, Fresh Evidence and DPP’s power

40. **Clause 30** of the Bill repeals Section 26A, 26B and 26C. These sections previously dealt with the use of certified copy statements, use of fresh evidence and the discretion of the Director of Public Prosecutions to refer the case to be dealt summarily, respectively.

### Preference of indictment against accused

41. **Clause 31** of the Bill repeals section 27 of the Act. This section previously dealt with the discretion of the Director of Public Prosecutions to prefer an indictment against the accused.

## Schedule 6

42. The proposed amendment in **Clause 43** of the Bill removes a list of offences to which the grounds of delay do not apply, in the discharge of an accused.

## Consequential Amendments

43. **Clause 45** of the Bill contains amendments that are consequential to the Act and affect other related legislation. These include the *Summary Courts Act, Chap. 4:20*, the *Criminal Procedure Act, Chap. 12:02*, the *Criminal Procedure (Change of Venue) Rules, Chap. 12:02*, the *Police Service Act, Chap. 15:01*, and the *Family and Children Division Act, 2016*.

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## KEY LEGISLATION

**Administration of Justice (Indictable Proceedings) (Amendment) Act, 2011**

<https://www.ttparliament.org/publication/the-administration-of-justice-indictable-proceedings-act-2011/>

**Administration of Justice (Indictable Proceedings) (Amendment) Act, 2012**

<https://www.ttparliament.org/wp-content/uploads/2022/01/a2012-15.pdf>

**Administration of Justice (Indictable Proceedings) (Amendment) Act, 2019**

<https://www.ttparliament.org/wp-content/uploads/2022/01/a2019-03g.pdf>

**Administration of Justice (Indictable Proceedings) (Amendment) (No. 2) Act, 2019**

<http://laws.gov.tt/ttdll-web2/revision/bytitle>

**Administration of Justice (Indictable Proceedings) (Amendment), 2020**

<https://www.ttparliament.org/publication/the-administration-of-justice-indictable-proceedings-amendment-act-2020/>

**Criminal Procedure Act, Chap. 12:02**

<http://laws.gov.tt/ttdll-web/revision/list?offset=0&q=crim&currentid=296>

<http://laws.gov.tt/ttdll-web/revision/download/105851?type=act>

**Family and Children Division Act, 2016**

<https://www.ttparliament.org/wp-content/uploads/2022/01/a2016-6.pdf>

**Police Service Act, Chap. 15:01**

<http://laws.gov.tt/ttdll-web/revision/list?offset=0&q=police%20&currentid=272>

**Summary Courts Act, Chap. 4:20**

<http://laws.gov.tt/ttdll-web/revision/list?offset=0&q=summary+cour&currentid=512#email-content>



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