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HOUSE OF REPRESENTATIVES

BILL

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

ADMINISTRATION OF JUSTICE (INDICTABLE
PROCEEDINGS (AMENDMENT) BILL, 2023

Explanatory Note

(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) (“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.

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

Clause 2 of the Bill would provide for the proposed Act to come into operation on a date fixed by the President by Proclamation.

Clause 3 of the Bill would provide for the definition of the words “the Act”, being the Administration of Justice (Indictable Proceedings) Act, 2011.

Clause 4 of the Bill would amend section 3(1) of the Act by inserting definitions of “alibi”, “appropriate adult”, audio recording”, “former Act”, “indictment”, “marked”, “video” and “warrant of apprehension”, deleting the definition of “prison” and substituting it with another definition and amending the definitions of “arrest warrant”, “prosecutor”, “Registrar” and “video link”. This clause would also delete the definition of “video recording”.

The Clause will also insert after section 3(1) subsections (1A) and (1B), the former to allow for electronic filing to be done for the purpose of the Act and the latter to state that the Criminal Procedure Act would apply to the Act in terms of the form and content of an indictment.

Clause 5 of the Bill would amend section 4 of the Act by repealing subsections (2) and (3) and substituting new subsections (2) and (3). The new subsection (2) allows a Magistrate to determine, in two circumstances, whether a case is to be determined in accordance with the Act, where proceedings were instituted prior to it coming into force. The new subsection (3) specifies two limited circumstances in which a Magistrate can determine a case in accordance with the Act.

Clause 6 of the Bill would amend section 5(3) by deleting paragraph (b) and substituting the said paragraph with a new paragraph (b) to allow a report to be filed in the High Court within fourteen days, by a constable upon the execution of a search warrant.

Clause 7 of the Bill would amend section 5A by repealing subsection (1) and substituting subsections (1) and (1A). Subsection (1) would allow for sections 13(2) to (4) and 14 of the Interception of Communication Act to apply where a search warrant has been issued under the Act for the purpose of obtaining data. Subsection (1A) specifies that subsection (1) would apply to a search warrant issued by a Master or issued by a person who exercises concurrent jurisdiction with a Master under section 10 of the Act.

Clause 8 of the Bill would amend section 6 of the Act by repealing subsections (1), (1A) and (1B) and substituting new subsections (1), (1A), (1B) and (1C) detailing the procedure as it relates to the institution of indictable proceedings and compelling the appearance of the accused. The clause would also amend section 6 by inserting a new subsection (1D) that deals with a complaint where the accused is a child or where there is a children charged matter within the meaning of section 3 of the Family and Children Division Act.

Clause 8 of the Bill would also insert a new subsection (2A) to provide for the circumstance in which a complaint is not made, but an indictment is preferred and filed under subsection (2) which allows the Master to issue a warrant for the apprehension of the accused to compel the latter's appearance for an initial hearing. This clause would also amend section 6(3) by deleting paragraph (e) and substituting new paragraphs (e) to (g). These new paragraphs would allow the Director of Public Prosecutions to prefer and file an indictment under subsection (2) where a Preliminary Enquiry or sufficiency hearing is not completed and the offence is of a violent or sexual nature, involves trafficking of persons where the accused or witness is a child or an adult witness is murdered or subjected to violence or where the witness or victim is not resident in Trinidad and Tobago.

Clause 9 of the Bill would amend the Act by inserting a new section 6A, which allows for a notice of complaint to be given to the Director of Public Prosecutions by the Master where a complaint is made under section 6(1), to compel the appearance of the accused before the Master.

Clause 10 of the Bill would amend section 7 of the Act by repealing subsection (7).

Clause 11 of the Bill would amend section 8 of the Act, by deleting the words “apprehension of accused” and substituting the words “Arrest warrant” in the marginal note and inserting after subsection (1) a new subsection (1A) which allows a Master to, if he thinks fit, issue an arrest warrant in cases where the accused is likely to leave Trinidad and Tobago. This clause will also amend section 8(6) by deleting the words, “or, where this is not possible, a Magistrate” and repeal section 8(7) and substitute it with a new section 8(7) which would permit a police officer to bring a person who is arrested and charged with an indictable offence before a Master or at the earliest available court date after the person is charged. The Bill also amends subsection (8) by deleting the words “or Magistrate”.

Clause 12 of the Bill would repeal section 8A of the Act.

Clause 13 of the Bill would amend section 10 of the Act by deleting “of Masters and Magistrates” in the marginal note and in subsection (1), by deleting the words “Magistrates and Magistracy Registrars and Clerks of the Court”. The clause would also insert a new subsection (1A) to ensure that Magistrate, Magistracy Registrar and Clerk of the Court would not exercise jurisdiction in relation to any matter referred to in subsection (1) or for which a Master is given jurisdiction under this Act. In order to harmonise the Act in accordance with section 10 (1A) subsections (2), (2A), (3) and (4) would also be amended, by clause 13 of the Bill.

Clause 14 of the Bill would amend the Act by inserting after section 10, a new section 10A which would address the jurisdiction of the Children Court.

Clause 15 of the Bill would amend section 11 of the Act which deals with the Scheduling Order and relevant arrangements in relation to the prosecution and accused at an initial hearing. This clause would also insert a new subsection (2A) to provide that the Scheduling Order shall not specify the date by which a complaint is to be submitted to the Director of Public Prosecutions or an indictment is to be filed and served where an indictment is filed under section 6(2).

Clause 16 of the Bill would amend the Act by repealing sections 12(1) to (5) and substituting new sections 12(1) to (4) to modify the manner in which a summary trial of either-way offences are dealt with under the Act.

Clause 17 of the Bill would amend section 13 of the Act by repealing sections 13(1) and (2) and substituting new sections 13(1) and (2) in order to provide adequately with respect to the notice of alibi.

This clause would also amend section 13 of the Act by repealing subsections (3A) and (4) and substituting a new subsection (3A) stating that a notice of alibi shall be served by the accused to the Director or Public Prosecutions within a specified time and also detailing what the notice should include.

Clause 18 of the Bill would amend section 14 of the Act by repealing subsection (4) and substituting a new subsection (4) in order to improve the clarity of the section which addresses the time for tendering alibi evidence.

Clause 19 of the Bill would amend section 17(5) of the Act by deleting the words, “by reason of illness or accident” and substituting with the words, “because of illness, accident or any other reason” in order to extend the situations under which a Master is able to order the further remand of an accused due to his absence at the adjournment under section 16, for a period of no longer than twenty-eight days.

Clause 20 of the Bill would amend section 19 of the Act repealing subsections (1) and (2) and substituting a new subsection (1) in order to improve the language concerning the holding of a sufficiency hearing. This clause will also amend section 19 of the Act by deleting and substituting the *chapeau* in subsection (4) and paragraph (a) in order to also improve the language and ensure that the procedure is properly explained. It would also amend the *chapeau* in subsection (5) to clarify the language and procedure. This clause would, further, amend section 19 of the Act by repealing subsections (6), (7) and (8) and substituting subsections (6) (7) and (7A) in order to adequately deal with an adjournment of a sufficiency hearing.

Clause 21 of the Bill would amend the Act by inserting after section 19, a new section 19A. Section 19A (1) would deal with a witness not being required to attend a sufficiency hearing unless a Master orders attendance. Section 19A (2) would provide that a witness statement filed by the prosecution or the accused must include a recognisance in the form set out in Schedule 7.

Clause 22 of the Bill would amend the Act in section 20(1)(a)(ii) by deleting the words, “copy exhibits” and substituting the words, “a copy of an exhibit” in order to ensure the language is clear as

it relates to the review of evidence. This clause amends sections (20)(4) and (5) by deleting “shall mark” and substituting “shall cause to be marked”. This clause would also amend section 20 of the Act by repealing subsection (7) and substituting it with a new subsection (7) to allow for clarity of language in terms of maintaining a record of all exhibits relied on by the prosecution or the defence.

Clause 23 of the Bill would amend section 21 of the Act in subsection (2) by deleting paragraphs (c) and (d) and substituting new paragraphs (c) and (d) to ensure that there is clarity in procedure as it relates to the admissibility of prosecution witness statements. This clause would also amend section 21(3) and 21(3A) by deleting the words “adult of choice” and substituting the words “appropriate adult” and deleting the words “or any other person qualified” and substituting the words “child psychologist, social worker, counsellor or other person who is similarly qualified”, respectively.

Clause 23 of the Bill would also delete paragraph (da) in section 21(4) of the Act and substitute a new paragraph (da) in order to clarify the procedure as it relates to a statement made by a person who does not speak fluent English. Additionally, this clause would further amend section 21, by repealing subsections (5) and (8) and substituting a new subsection (8) which pertains to a transcript of proceedings and evidence obtained under a treaty to be admissible as evidence at a sufficiency hearing.

Clause 24 of the Bill would amend section 23 of the Act by deleting paragraph (b) and substituting a new paragraph (b) to provide for the Criminal Procedure Act in relation to orders under section 25, concerning a Master’s final decision at a sufficiency hearing.

Clause 25 of the Bill would amend section 24 of the Act by inserting in subsection (1), after the words “of any indictable offence”, the words “on the indictment”, as it relates to discharge of the accused. This clause would also repeal subsections (4) to (11) of section 24 and substitute them with subsections (4) to (6) in order to allow the Director of Public Prosecutions to appeal the decision of a Master if the former is of the opinion that the accused ought not to have been discharged and to allow for the appeal from a Master’s decision to be to the Court of Appeal in accordance with 65C of the Supreme Court of Judicature Act.

Clause 26 of the Bill would amend section 25 of the Act by repealing subsections (1) to (3) and substituting a new subsection (1) to deal with an offence under the Criminal Procedure Act. The clause would also amend section 25 by repealing subsections (2) and (3). Additionally, this clause would amend subsections (4) and (5) to ensure clarity of language as it pertains to the Criminal Procedure Act.

Clause 27 of the Bill would amend section 26 of the Act by repealing subsections (1) and (2) and substituting new subsections (1), (1A), (1B) and (2) to clarify the language relating to the procedure of transmission, custody of documents and exhibits relating to a case.

Clause 28 of the Bill would amend the Act by repealing section 26A.

Clause 29 of the Bill would amend the Act by repealing section 26B.

Clause 30 of the Bill would amend the Act by repealing section 26C.

Clause 31 of the Bill would amend the Act by repealing section 27.

Clause 32 of the Bill would, principally, amend section 28 of the Act by, *inter alia*, deleting paragraph (c) of section 28(1) and inserting a new subsection (1A) to account for where a Master has referred an accused to a Judge for sentencing and the Director of Public Prosecutions is to be given notice of the referral. Clause 32 of the Bill also amends section 28 of the Act by repealing subsection (2).

Clause 33 of the Bill would amend section 28A(2) of the Act, to clarify the language and it would also repeal subsection (4).

Clause 34 of the Bill would amend section 28B(2) of the Act by inserting after the words, "will not depart", the words, "the jurisdiction of".

Clause 35 of the Bill would amend section 28D of the Act by repealing subsections (1) and (2).

Clause 36 of the Bill would amend section 29(2)(b) to allow the oath of a credible witness, whose attendance is not reasonably practicable as a result of being outside of Trinidad and Tobago, to be secured physically or by electronic means. The clause will also amend section 29 of the Act by repealing subsection (7).

Clause 37 of the Bill would amend section 30 of the Act by repealing subsections (1) to (6) and substituting a new subsection (6) to account for the indictable offence being dealt with by the High Court in accordance with the Criminal Procedure Act.

Clause 38 of the Bill would amend section 32A of the Act to clarify the procedure under subsection (1). This clause would also repeal subsection (5) and substitute new subsections (5) and (6). The new subsection (5) would state that when notice is given to the Registrar under subsection (3), the Registrar shall issue a notice to the accused to appear before a Master on the date specified in the notice. The new subsection (6) would account for proceedings instituted under the former Act to be admissible as evidence at a sufficiency hearing.

Clause 39 of the Bill would amend the Act by inserting after section 32A, a new section 32B to deal with anonymisation of any document filed or issued, and keeping records of same, under the Act, if necessary in specified circumstances.

Clause 40 of the Bill would amend the Act in section 33(2) by deleting the words, “where neither the prosecutor nor the accused elects to have the case determined in accordance with this Act” and substituting the words “no order is made under section 32A” in order to allow for savings under the Indictable Offences (Preliminary Enquiry) Act.

Clause 41 of the Bill would amend section 34 of the Act by providing that by Practice Direction, the Chief Justice may amend any form contained in the Schedules to the Act, instead of detailing specific Schedules.

Clause 42 of the Bill would amend Schedule 5 of the Act by deleting Form 1.

Clause 43 of the Bill would amend Schedule 6 of the Act by repealing Schedule 6.

Clause 44 of the Bill would amend Schedule 7 of the Act by repealing Schedule 7 and substituting a new Form.

Clause 45 of the Bill deals with consequential amendments to 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.

ADMINISTRATION OF JUSTICE (INDICTABLE
PROCEEDINGS (AMENDMENT) BILL, 2023

Arrangement of Clauses

Clause

1. Short title
2. Commencement
3. Interpretation
4. Section 3 amended
5. Section 4 amended
6. Section 5 amended
7. Section 5A amended
8. Section 6 amended
9. Section 6A inserted
10. Section 7 amended
11. Section 8 amended
12. Section 8A repealed
13. Section 10 amended
14. Section 10A inserted
15. Section 11 amended
16. Section 12 replaced
17. Section 13 amended
18. Section 14 amended
19. Section 17 amended
20. Section 19 amended
21. Section 19A inserted
22. Section 20 amended
23. Section 21 amended
24. Section 23 amended
25. Section 24 amended

26. Section 25 amended
27. Section 26 amended
28. Section 26A repealed
29. Section 26B repealed
30. Section 26C repealed
31. Section 27 repealed
32. Section 28 amended
33. Section 28A amended
34. Section 28B amended
35. Section 28D amended
36. Section 29 amended
37. Section 30 amended
38. Section 32A amended
39. Section 32B inserted
40. Section 33 amended
41. Section 34 amended
42. Schedule 5 amended
43. Schedule 6 repealed
44. Schedule 7 replaced
45. Consequential amendments

BILL

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

[, 2023]

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,
2023.

2. This Act comes into operation on such date as is Commencement
fixed by the President by Proclamation.

Interpretation
Act No. 20 of 2011

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

Section 3 amended

4. Section 3 of the Act is amended—

(a) in subsection (1)—

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

““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;

“appropriate adult” has the meaning assigned in section 3 of the Children Act;

“audio recording” means an audio recording on a non-rewritable recording medium identifying the persons speaking;

“former Act” means the Indictable Offences (Preliminary Enquiry) Act;

Chap. 46:01

Chap. 12:01
Act No. 14 of 2014

"indictment" has the same meaning as in the Criminal Procedure Act;

Chap. 12:02

"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;

"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;";

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

““prison” means—

(a) in relation to an adult, any place referred to in section 3 of the Prisons Act or any place declared or appointed a prison under that Act; or

(b) in relation to a child, a Rehabilitation Centre as defined in or designated under the Child Rehabilitation Centres Act;”;

Chap. 13:01

Chap. 13:05

- (iii) in the definition of “arrest warrant”, by inserting after the words “written law”, the words “, on an application made on oath,”;

- (iv) in the definition of “prosecutor”, by inserting after the words “police prosecutor”, the words “who satisfies section 64A of the Police Service Act”;

Chap. 15:01

- (v) in the definition of “Registrar”, by inserting after the words “the Registrar”, the words “, Deputy Registrar and Assistant Registrar”;

(vi) in the definition of “video link”—

(a) in paragraph (a)—

(A) by inserting
after the words
“Master,”, the
word “Registrar”;
and

(B) by inserting
after the words
“the Court,”, the
words “as the
case may be.”;

(b) in paragraph (c), by inserting
after the words “proceed-
ings;”, the word “and”; and

(c) by deleting paragraphs (d)
and (e) and substituting
the following paragraph:

“(d) where applicable—

(i) any interpreter
or other person
appointed to
assist; and

(ii) any other
person who
may be
required to
assist the
Court in the
conduct of its
proceedings.”;
and

(vii) by deleting the definition of
“video recording”; and

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

“(1A) For the purpose of this Act, anything that is required to be filed may be filed electronically.

(1B) The provisions of the Criminal Procedure Act with respect to the form and content of an indictment apply to an indictment filed pursuant to this Act.”; and

(c) in subsection (3), by deleting all the words occurring after the words “when the accused” and substituting the words “is charged”.

Chap. 13:05

Section 4 amended **5.** Section 4 of the Act is amended, by repealing subsections (2) and (3) and substituting the following subsections:

“(2) Subject to subsection (3), where proceedings were instituted prior to the coming into force of this Act, a Magistrate shall determine whether the case is to be determined in accordance with this Act—

(a) after giving the prosecutor and the accused an opportunity to be heard in this regard; and

(b) in the interest of justice and fairness to the parties.

(3) A Magistrate shall not determine that a case is to be determined in accordance with this Act unless the Magistrate—

(a) in the case of a joint trial, so determines in respect of all accused; and

(b) in a case where two or more charges are to be tried together, so determines in respect of all charges.”.

6. Section 5(3) of the Act is amended, by deleting Section 5 amended paragraph (b) and substituting the following paragraph:

“(b) file the report in the High Court within fourteen days.”.

7. Section 5A of the Act is amended, by repealing Section 5A amended subsection (1) and substituting the following subsections:

“(1) Where a search warrant has been issued under this Act for the purpose of obtaining communications data, stored communication or stored data, sections 13(2) to (4) and 14 of the Interception of Communications Act apply.

Chap. 15:08

(1A) Subsection (1) applies to a search warrant issued by a Master under this Act or to a search warrant issued by a person referred to in section 10 who exercises concurrent jurisdiction with a Master.”.

8. Section 6 of the Act is amended—

Section 6 amended

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

“(1) Where a complaint is made in writing by any person charging or alleging that an indictable offence has been committed, by an accused, an application may be made to a Master to issue a summons or an arrest warrant to compel the appearance of the accused before him.

(1A) A Master may, if he is satisfied that there are grounds for believing that an indictable offence has been committed, issue a summons or an arrest warrant to compel the appearance of the accused before him.

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

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

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

“(1D) Notwithstanding subsection (1), where the complaint is in respect of an accused who is a child or it is a children charge matter within the meaning of section 3 of the Family and Children Division Act—

Act No. 6 of
2016

(a) the complaint shall be made to a Judge; and

(b) if the Judge determines that the matter is to be dealt with indictably, the matter shall be assigned to a Master to be dealt with in accordance with this Act.”; and

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

“(2A) Where an indictment is preferred and filed under subsection (2) without the making of a complaint, a Master shall issue a warrant of apprehension to compel the appearance of the accused before him for the purposes of an initial hearing.”;

(d) in subsection (3), by—

(i) deleting paragraph (e) and

substituting the following paragraphs:

“(e) in the case of an offence of a violent nature, an offence of a sexual nature or an offence involving the trafficking of persons;

(f) where—

(i) the accused is a child;

(ii) a witness is a child; or

(iii) an adult witness was murdered or has been subject to violence, threats or intimidation; or

(g) where a witness or an alleged victim of the offence is not resident in Trinidad and Tobago.”.

9. The Act is amended, by inserting after section 6 Section 6A inserted the following section:

“Notice of
complaint to
Director of
Public
Prosecution

6A. Where a complaint is made under section 6(1) by a person other than a police officer, the Master shall cause to be given to the Director of Public Prosecutions notice of the complaint and any summons or arrest warrant issued to compel the appearance of the accused before the Master.”.

10. Section 7 of the Act is amended, by repealing Section 7 amended subsection (7).

Section 8 amended

11. Section 8 of the Act is amended—

(a) in the marginal note, by deleting the words “Apprehension of accused” and substituting the words “Arrest warrant”;

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

“(1A) A Master may, if he thinks fit, issue an arrest warrant in cases where the accused is likely to leave Trinidad and Tobago.”;

(c) in subsection (6), by deleting the words “or, where this is not possible, a Magistrate”;

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

“(7) A police officer shall bring a person who is arrested and charged with an indictable offence before a Master forthwith or at the earliest available Court date after the person is charged.”; and

(e) in subsection (8), by deleting the words “or Magistrate”.

Section 8A repealed

12. Section 8A of the Act is repealed.

Section 10 amended

13. Section 10 of the Act is amended—

(a) in the marginal note, by deleting the words “of Masters and Magistrates”;

(b) in subsection (1), by deleting the words “Magistrates and Magistracy Registrars and Clerks of the Court”;

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

“(1A) Notwithstanding any written law which provides for a Magistrate or a Magistracy Registrar and Clerk

of the Court to have or exercise jurisdiction in relation to any matter—

(a) referred to in subsection (1);
or

(b) for which a Master is given jurisdiction under this Act, a Magistrate or Magistracy Registrar and Clerk of the Court shall not have nor exercise such jurisdiction.”;

(d) in subsection (2), by—

(i) deleting the words “or a Magistrate or Magistracy Registrar and Clerk of the Court; and

(ii) deleting all the words occurring after the words “required under section” and substituting the words “5(3) to be filed in the High Court, be filed in the Court from which it was issued, within the period specified in section 5(3).”;

(e) in subsection (2A), by deleting the words “or a Magistrate or Magistracy Registrar and Clerk of the Court”;

(f) in subsection (3), by deleting the words “or a Magistrate or Magistracy Registrar and Clerk of the Court”; and

(g) in subsection (4), by deleting the words “, the Registrar or a Magistrate or Magistracy Registrar and Clerk of the Court” wherever it occurs and substituting the words “or Registrar”.

Section 10A inserted **14.** The Act is amended, by inserting after section 10 the following section:

<sup>“Jurisdiction
of Children
Court</sup> 10A. In respect of an accused who is a child or an accused who was a child on the date of the commission of an offence, the Children Court shall have and exercise jurisdiction to determine whether any such matter under this Act, is—

- (a) a children matter as defined in section 3 of the Family and Children Division Act, 2016; and
- (b) a matter to which a process, programme, rule, procedure, restriction, supervision or measure under the Family and Children Division Act, 2016 applies.”

Section 11 amended **15.** Section 11 of the Act is amended—

- (a) in subsection (1), by deleting the words “in accordance with” and substituting the words “pursuant to”;
- (b) in subsection (2)—
 - (i) in the *chapeau*, by inserting after the word “shall”, the words “, where practicable,”;
 - (ii) by deleting paragraph (b)(ii) and substituting the following paragraph:
 - “(ii) if the accused is not represented and requests legal representation—
 - (A) fix a date by which the accused shall

retain an
 Attorney-at-law
 to represent
 him; or

(B) give such
 directions or
 make such
 orders as may be
 appropriate with
 respect to legal
 aid; or”;

(iii) by deleting paragraph (e); and

(iv) in paragraph (h)—

(A) in subparagraph (iii), by
 inserting after the
 words “serve on the
 accused” the words “the
 indictment, and”;

(B) in subparagraphs (iv),
 by deleting all the words
 after the words “from
 the date” and substituting
 the words “specified
 under subparagraph (iii),
 or such longer period as
 the Master thinks fit;”;

(C) in subparagraph (v), by
 deleting all the words
 after the words “from
 the date” and substituting
 the words “specified
 under subparagraph (iv);
 and”;

(D) by deleting all the
 words occurring after
 subparagraph (v) and

substituting the following:

“(vi) the dates on which the prosecutor, the accused or the Legal Aid and Advisory Authority, as the case may be, may appear, if necessary, before the Master to apply for an extension of time—

(A) to file and serve the indictment or witness statements and other documentary evidence;

(B) to retain an Attorney-at-law, in the case of the accused; or

(C) to provide legal aid to the accused, in the

case of the
 Legal Aid
 a n d
 Advisory
 Authority,
 and for the
 Scheduling Order
 to be amended
 accordingly.”;
 and

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

“(2A) Notwithstanding subsection (2)(h), where an indictment is filed under section 6(2), the Scheduling Order shall not specify the date by which a complaint is to be submitted to the Director of Public Prosecutions or an indictment is to be filed and served.”;
 and

(d) by repealing subsection (6).

16. Section 12 of the Act is repealed and the following Section 12 replaced section substituted:

“Summary
 trial for
 either-way
 offences

12. (1) Where a complaint is made or an indictment is filed under section 6 in respect of an either-way offence and the Director of Public Prosecutions or a person acting under his instructions informs the Master that the case is to be dealt with summarily, the Master shall forthwith cause the matter to be transferred to the District Criminal and Traffic Court.

(2) Subject to subsection (1), where the Director of Public Prosecutions files and serves an indictment in respect of an either-way offence, the case shall be

dealt with on indictment in accordance with this Act and, if an order is made under section 25, the Criminal Procedure Act.

(3) Subject to subsection (4), if a penalty is not specified for summary conviction of an either-way offence, the person is liable on summary conviction to, the lesser of—

(a) a fine of two hundred and fifty thousand dollars and imprisonment for two years; or

(b) the penalty to which he would be liable if he had been convicted on indictment.

(4) In respect of a matter under subsection (1), where a person is convicted summarily of attempting or inciting another person to commit a summary offence, he shall not be liable to a penalty greater than that to which he would have been liable if he were convicted of that summary offence.”

Section 13 amended **17.** Section 13 of the Act is amended by—

(a) repealing subsections (1) and (2) and substituting the following subsections:

“(1) At an initial hearing, a Master shall—

(a) warn the accused that at a trial, he shall not be permitted to give, or to call a witness to give, an alibi or evidence in support of an alibi unless, before the trial, he has provided the

particulars of the alibi or a notice of alibi; and

- (b) inform the accused that he has an option to—
 - (i) give the Master the particulars of the alibi during the sufficiency hearing; or
 - (ii) serve the Director of Public Prosecutions a written notice of alibi, within twenty-eight days of the initial hearing.

(2) A Master, when giving the warning under subsection (1), shall explain the meaning of “alibi” to the accused.”

- (b) repealing subsection (3A) and substituting the following subsection:

“(3A) A notice of alibi shall be served by the accused on the Director of Public Prosecutions within the time specified in subsection (1) and include—

- (a) particulars of the time and place where the accused was present when the offence is alleged to have been committed;
- (b) the name and address of any witness to the presence of the accused at the time

and place referred to in paragraph (a), if known; and

- (c) if the name or address of a witness to the alibi is not known, any information that describes or may assist to identify or find the witness.”; and

(c) repealing subsection (4).

Section 14 amended **18.** Section 14(4) of the Act is repealed and the following subsection substituted:

“(4) Subject to the discretion of the Court as to the time at which evidence may be given, tendered or adduced, evidence to disprove an alibi may be given, tendered or adduced before or after evidence of an alibi or evidence in support of an alibi is tendered, given or adduced”.

Section 17 amended **19.** Section 17(5) of the Act is amended, by deleting the words “by reason of illness or accident” and substituting the words “because of illness, accident or any other reason”.

Section 19 amended **20.** Section 19 of the Act is amended—

- (a) by repealing subsections (1) and (2) and substituting the following subsection:

“(1) A Master shall hold a sufficiency hearing to determine whether there is sufficient evidence to establish a *prima facie* case of any indictable offence on an indictment.”;

- (b) in subsection (4), by deleting the *chapeau* and paragraph (a) and substituting the following:

“The Master shall, if an accused is not represented by an Attorney-at-law

at a sufficiency hearing and—

(a) requests legal representation—

(i) fix a date by which the accused shall retain an Attorney-at-law to represent him; or

(ii) give such directions or make such orders as may be appropriate with respect to legal aid; or”;

(c) in subsection (5), by deleting the *chapeau* and substituting the following:

“If an accused fails to attend a sufficiency hearing, the Master may proceed with the sufficiency hearing in the absence of the accused unless the Master is satisfied—”; and

(d) by repealing subsections (6), (7) and (8) and substituting the following subsections:

“(6) At any time before or during a sufficiency hearing, a Master may adjourn the sufficiency hearing at the request of the accused or the prosecutor, if the Master considers it expedient to do so.

(7) Where an accused is remanded, an adjournment shall not be for more than twenty-eight clear days, unless the accused and the prosecutor consent to a longer period for the adjournment.

(7A) Where no court is to be held within the twenty-eight days referred to in subsection (7), then the adjournment may be fixed for the next day on which the Master holds court.”.

Section 19A inserted **21.** The Act is amended, by inserting after section 19, the following section:

“Witnesses and witness statements 19A. (1) The attendance of a witness shall not be required at a sufficiency hearing unless, on application, the Master makes an order for the attendance of a witness who filed an unsworn statement.

(2) In addition to the requirements for admissibility of a prosecution’s witness statement under section 21, a witness statement filed by the prosecution or the accused shall include a recognisance in the form set out in Schedule 7.”.

Section 20 amended **22.** Section 20 of the Act is amended—

- (a) in subsection (1)(a)(ii), by deleting the words “copy exhibits” and substituting the words “a copy of an exhibit”;
- (b) in subsections (4) and (5), by deleting the words “shall mark” and substituting the words “shall cause to be marked,”; and
- (c) by repealing subsection (7) and substituting the following subsection:

“(7) The Court shall maintain a record of all exhibits relied on by the prosecution or the defence.”.

Section 21 amended **23.** Section 21 of the Act is amended—

- (a) in subsection (2), by deleting paragraphs (c)

and (d) and substituting the following paragraphs:

“(c) the original statement, if it is in writing,—

- (i) is purported to be signed by the witness in the presence of a police officer and is dated; or
- (ii) except in the case of a child under the age of ten years, was sworn before and authenticated by a signed certificate of—

- (A) a Justice of the Peace or a Commissioner of Affidavits; or

- (B) if the witness was outside of Trinidad and Tobago when the statement was prepared, a Notary Public or a similar duly authorised official from the jurisdiction in which the statement was prepared; and”;

(d) the original statement, if it is a video or audio recording—

- (i) complies with the Evidence Act and the Chap. 7:02 Judges Rules with respect to a video or audio recording; or

- (ii) except in the case of a child under the age of ten years, was sworn before and authenticated by a recorded certificate of a person referred to in paragraph (c)(ii); and”;
- (b) in subsection (3), by deleting the words “adult of choice” and substituting the words “appropriate adult”;
- (c) in subsection (3A), by deleting the words “or any other person qualified” and substituting the words “, child psychologist, social worker, counsellor or other person who is similarly qualified”;
- (d) in subsection (4)—
 - (i) in paragraph (a), by deleting the words “adult of choice” and substituting the words “appropriate adult”;
 - (ii) in paragraphs (c) and (d), by inserting after the words “agreed to it”, the words “as accurately reflecting what he said”; and
 - (iii) by deleting paragraph (da) and substituting the following paragraph:
 - “(da) where the statement is made by a person who does not speak English fluently, the statement shall—
 - (i) be taken in a language which the person speaks fluently,

- in writing or by video or audio recording;
- (ii) comply with the conditions for a written statement or a statement by video or audio recording;
 - (iii) be accompanied by a translation of the statement in English; and
 - (iv) be accompanied by an affidavit of the person who provided the translation that—
 - (A) is sworn before and authenticated by a person referred to in subsection (2)(c)(ii); and
 - (B) includes the qualifications of the translator and a statement of belief that the translation is fair and accurate; and”;

- (e) by repealing subsection (4A);
- (f) by repealing subsection (5);
- (g) in subsection (6), by—
 - (i) deleting the words “to (5)” and substituting the words “to (4)”; and
 - (ii) inserting after the words “in accordance with”, the words “the Evidence Act and”; and
- (h) by repealing subsection (8) and substituting the following subsection:

“(8) Notwithstanding subsections (1) to (4)—

(a) a transcript of proceedings before—

- (i) a Coroner,
- (ii) the High Court,
- (iii) a tribunal appointed under section 15 of the Integrity in Public Life Act; or
- (iv) Commission of Enquiry; or

(b) evidence obtained under a treaty referred to in section 40 of the Mutual Assistance in Criminal Matters Act,

shall, in accordance with the Evidence Act and Rules of Court or any other written law, be admissible as evidence at a sufficiency hearing.”.

Chap. 7:02

Chap. 22:01

Chap. 11:24

24. Section 23 of the Act is amended—

Section 23 amended

(a) by deleting paragraph (b) and substituting the following paragraph:

“(b) 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;”;
and

(b) in paragraph (c), by deleting the words “the charge” and substituting the words, “the indictment”.

25. Section 24 of the Act is amended—

Section 24 amended

(a) in subsection (1), by—

(i) deleting the words “not sufficient” and substituting the word “insufficient”; and

(ii) inserting after the words “of any indictable offence” the words “on the indictment”;

(b) by repealing subsections (4) to (11) and substituting the following subsections:

“(4) Where an accused is discharged, the Master shall, on the written request of the Director of Public Prosecutions, transmit within fourteen days to the Director of Public Prosecutions the record of the sufficiency hearing.

(5) The Director of Public Prosecutions may appeal the decision of the Master, if the Director of Public Prosecutions is of the opinion that the accused ought not to have been discharged.

Chap. 4:01

(6) In accordance with section 65C of the Supreme Court of Judicature Act, an appeal from the decision of a Master to discharge an accused shall be to the Court of Appeal.”.

Section 25 amended

26. Section 25 of the Act is amended—

(a) in the marginal note, by deleting the words “put accused on trial” and substituting the words “to deal with offence under the Criminal Procedure Act”;

(b) by repealing subsections (1), (2) and (3) and substituting the following subsection:

“(1) Where after reviewing the evidence submitted by the prosecutor and the accused, a Master finds that there is sufficient evidence to establish a *prima facie* case of any indictable offence on the indictment, the Master—

(a) shall order that the indictable offence be dealt with by the High Court in accordance with the Criminal Procedure Act; and

(b) may cause the indictment to be amended accordingly.”;

(c) in subsection (4)—

(i) in the *chapeau*, by deleting the words “that an accused be put on trial” and substituting the words “under subsection (1) that an indictable offence be dealt with by the High Court in accordance with the Criminal Procedure Act”;

- (ii) by deleting all the words after the words “the Bail Act,” and substituting a fullstop.
- (d) in subsection (5), by deleting the words “to put an accused on trial” and substituting the words “that an indictable offence be dealt with by the High Court in accordance with the Criminal Procedure Act”.

27. Section 26 of the Act is amended, by repealing Section 26 amended subsections (1) and (2) and substituting the following subsections:

“(1) Where the Master orders under section 25(1) that any indictable offence be dealt with by the High Court in accordance with the Criminal Procedure Act, the Master shall, without delay, give the Director of Public Prosecutions notice of—

- (a) the order under section 25(1);
- (b) the documents comprising the record of the sufficiency hearing which have been transferred to and are available from the court office; and
- (c) all the exhibits, other than documentary exhibits, which are in the charge of the police or are being kept as directed by the Master directed under subsection (2).

(1A) The record of the sufficiency hearing includes—

- (a) the order under section 25(1);
- (b) the indictment, witness statements and other documentary evidence submitted by the prosecutor;

- (c) any witness statement or other documentary evidence submitted by the accused;
- (d) any particulars or notice of alibi;
- (e) any recognisance entered into by the accused;
- (f) any document or information concerning the remand of an accused to custody or release on bail under section 25(4);
- (g) any recognisance, other documents or information concerning the attendance of a witness at a trial; and
- (h) any other relevant document.

(1B) Where the Master makes an order under section 25(1), the record of the sufficiency hearing shall, without the documents being filed by either party, form part of the bundle of documents to be considered by the High Court in the criminal proceeding.

(2) All exhibits, other than documentary exhibits, produced at a sufficiency hearing shall be in the charge of the police or kept as directed by the Master and produced at the criminal proceedings as required by the Court.”.

- Section 26A repealed **28.** The Act is amended by repealing section 26A.
- Section 26B repealed **29.** The Act is amended by repealing section 26B.
- Section 26C repealed **30.** The Act is amended by repealing section 26C.
- Section 27 repealed **31.** The Act is amended by repealing section 27.

32. Section 28 of the Act is amended—

Section 28 amended

(a) in subsection (1)—*(i)* in the *chapeau* by—

(A) deleting the words “at the sufficiency hearing, other than one in which the charge is for treason or murder” and substituting the words “at any time before the conclusion of a sufficiency hearing”; and

(B) deleting the words “committed for sentence, instead of being committed for trial” and substituting the words “referred to a Judge for sentencing without a trial”;

(ii) in paragraph *(a)* by deleting the words “twenty-eight days” and substituting the words “three months”;

(iii) in paragraph *(b)(ii)*, by deleting the words “; and” and substituting a fullstop; and

(iv) by deleting all the words occurring after paragraph *(b)*;

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

“(1A) Where a Master has referred an accused to a Judge for sentencing, the Director of Public Prosecutions shall be given notice of the referral and section 26 applies, *mutatis mutandis*, to such notice.”; and

(c) by repealing subsection (2).

Section 28A
amended

33. Section 28A of the Act is amended—

(a) in subsection (1), by deleting the words “28(1)(a)” and substituting the words “28(1)”;

(b) in subsection (2), by—

(i) deleting all the words from “instead of committing” to “High Court” and substituting the words “order that the accused person be referred to a Judge for sentencing without a trial”; and

(ii) deleting the words “or delivered by due course of law”; and

(c) by repealing subsection (4).

Section 28B
amended

34. Section 28B of the Act is amended in subsection (2), by inserting after the words “will not depart” the words “the jurisdiction of”.

Section 28D
amended

35. Section 28D of the Act is amended, by repealing subsections (1) and (2).

Section 29 amended

36. Section 29(2)(b) of the Act is amended—

(a) in subsection (2)—

(i) in sub-paragraph (iii), by deleting the words “or a certificate from the Chief Immigration Officer stating that the witness is outside of the country is submitted” and substituting the words “whether physically or by electronic means”; and

(ii) in sub-paragraph (v), by inserting after the words “protect the person” the words “or a member of his family”; and

(b) by repealing subsection (7).

37. Section 30 of the Act is amended—

Section 30 amended

- (a) by deleting the marginal note and substituting the words “Securing attendance of witnesses for trial”;
- (b) by repealing subsections (1) to (5);
- (c) by repealing subsection (6) and substituting the following subsection:

“(6) Where a Master orders under section 25(1) that the indictable offence be dealt with by the High Court in accordance with the Criminal Procedure Act, the Master shall inform the accused—

- (a) that the accused may give notice to the Registrar under subsection (9) of the witnesses he desires to attend the trial; and
- (b) of the procedures under the Criminal Procedure Act that the accused may follow to secure or compel the attendance of a witness at the trial.”; and
- (d) in subsections (7) and (9), by inserting after the words “the names”, the words “, places of abode and contact information”.

38. Section 32A of the Act is amended—Section 32A
amended

- (a) in subsection (1), by—
 - (i) deleting the words “the prosecutor or an accused elects” and substituting the words “a Magistrate determines”; and

- (ii) deleting the words “as soon as possible” and substituting the words “on the date specified in the notice given under subsection (5)”; and
- (b) by deleting subsection (5) and substituting the following subsections:

“(5) When notice is given to the Registrar under subsection (3), the Registrar shall issue a notice to the accused to appear before a Master on the date specified in the notice.

(6) Where an order is made under subsection (1), depositions taken, exhibits admitted and other documents or evidence tendered, submitted or filed in proceedings instituted under the former Act may, in accordance with Rules of Court made under this Act and the Evidence Act, be admissible as evidence at a sufficiency hearing.”.

Section 32B inserted **39.** The Act is amended, by inserting after section 32A, the following section:

^{“Anonymisation} 32B. (1) The Registrar may, on application or in his own discretion, anonymise any document filed or issued under this Act, if anonymisation is necessary—

- (a) for the protection or safety of a witness or accused;
- (b) to prevent serious damage to property;

(c) in cases involving witnesses who the Court considers to be vulnerable by virtue of—

- (i) the age or immaturity of the witness;
- (ii) a physical disability or mental disorder;
- (iii) any trauma suffered by the witness;
- (iv) the witness' fear of intimidation; or
- (v) the nature of the offence, including sexual offences, for which the witness is the virtual complainant; or

(d) in the interest of public safety.

(2) Where a document is anonymised, the Registrar shall keep the original document in the High Court's records of the proceeding.

(3) In this section "anonymise", and its grammatical variations, have the same meaning as in section 3 of the Family and Children Division Act, 2016."

40. Section 33(2) of the Act is amended, by deleting Section 33 amended the words "neither the prosecutor nor the accused elects to have the case determined in accordance with that Act" and substituting the words "no order is made under section 32A".

41. (1) Section 34 of the Act is amended, by deleting Section 34 amended the words "Schedule 1, 1A, 3, 4, 5 or 7" and substituting the words "the Schedules to this Act".

Schedule 5 amended **42.** Schedule 5 to the Act is amended, by deleting Form 1.

Schedule 6 repealed **43.** The Act is amended, by repealing Schedule 6.

Schedule 7 repealed and replaced **44.** The Act is amended, by repealing Schedule 7 and substituting the following Schedule:

“SCHEDULE 7

[Section 30(1)]

RECOGNISANCE

REPUBLIC OF TRINIDAD AND TOBAGO

Recognisance of Witnesses in High Court Cases

I, _____ personally acknowledge that I owe to the State the sum of five hundred dollars if I fail to attend court to give evidence when so called upon.

Signed by Witness

Dated the

Witnessed by:”

Consequential amendments

45. The Acts listed under Column A are amended to the extent indicated in Column B—

Column A

Column B

The Summary Courts Act, Chap. 4:20

The Summary Courts Act is amended by repealing sections 94, 95, 96 and 100.

The Criminal Procedure Act, Chap. 12:02

The Criminal Procedure Act is amended—
(a) by deleting sections 3, 4 and 5 and substituting the following:

“3. The place, time and mode of trial shall be in accordance with Rules of the Committee made under section 77 of this Act.

*Column A**Column B*

The Criminal Procedure Act, Chap. 12:02

4. Notwithstanding any rule made under section 3, the Director of Public Prosecutions, whenever he considers that the ends of justice so require, or that having regard to all the circumstances it is desirable to do so in the interests of securing the more expeditious hearing and determination of cases, may in any case apply for a change to the place, time or mode of trial.

The Criminal Procedure (Change of Venue) Rules, Chap. 12:02

The Criminal Procedure (Change of Venue) Rules are revoked.

The Police Service Act, Chap. 15:01

The Police Service Act is amended—
 (a) in section 45(d), by inserting after the word “may”, the words “, subject to section 64A,”; and
 (b) by inserting after section 64, the following section:

“64A. For the purposes of any proceeding under the Administration of Justice (Indictable Proceedings) Act, 2011 or the Criminal Procedure Act, a police officer shall not prosecute unless, in accordance with the Legal Profession Act, the police officer is—

(a) an attorney-at-law; and

(b) holds a practicing certificate or is a law officer.”.

The Family and Children Division Act, 2016

The Family and Children Division Act is amended—

(a) in section 3, in the definition of “children charge matter” by inserting after the words “an offence”, the words “or a matter which is determined to be a child charge matter under section 25”; and

Column A
The Family and Children
Division Act, 2016

Column B

(b) in section 25, by—

(i) inserting after subsection (1),
the following subsections:

“(1A) It shall be within
the jurisdiction of
the Children Court to
determine, whether any
matter in respect of an
accused who was a child
on the date of the
commission of an
offence—

(a) is a children
matter; or

(b) is not a children
matter but
that a process,
programme,
rule, procedure,
restriction,
supervision or
measure which
applies to a
children charge
matter, applies
to the accused
in that matter.

(1B) In making the
determination under
subsection (1A), the
Children Court shall
consider—

(a) the date on
which the
offence was
committed;

(b) the age of the
accused on the
date the offence
was committed;

(c) the current age
of the accused;

(d) any past or
present report
on or assess-
ment of the
accused by

Passed in the Senate this day of ,
2023.

Clerk of the Senate

I confirm the above.

President of the Senate

No. 4 of 2023

THIRD SESSION
TWELFTH 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
