



THE PARLIAMENT OF
TRINIDAD AND TOBAGO

BILL ESSENTIALS

Date Introduced: 22 March 2019

House: House of Representatives

Minister: Attorney General and Legal
Affairs

HOR Bill No: 5 of 2019

Links: The links to the Bill, and its progress can be found on the Bill's home page through the Parliament's website, www.ttparliament.org

BILL ESSENTIALS

BILL ESSENTIALS NO. 11, 2018–19

28 March, 2019

The Administration of Justice (Indictable Proceedings) (Amendment) (No.2) Bill, 2019

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BACKGROUND



1. **The Administration of Justice (Indictable Proceedings) (Amendment) (No. 2) Bill, 2019¹** (hereinafter referred to as “the Bill”) aims to amend the **Administration of Justice Indictable Proceedings Act No. 20 of 2011²** (hereinafter referred to as “the Act”).
2. The Act provides for the abolition of preliminary enquiries and for the holding of initial and sufficiency hearings by a Master of the High Court where a person is charged with an indictable offence.
3. The Act was previously amended by **The Administration of Justice (Indictable Proceedings) (Amendment) Act, No.3 of 2019³** which was assented to on 13th February 2019. This is the second phase of amendments being undertaken.
4. The Bill was introduced by the Attorney General and Minister of Legal Affairs in the House of Representatives on 22nd March 2019.

KEY FEATURES OF THE BILL

INTERPRETATION

5. **Clause 3** amends **Section 3(1)** of the Act by expanding the definition of “*accused*” to include a person who is charged with an indictable offence.

APPLICATION






6. **Clause 4** of the Bill amends **Section 4** of the Act by inserting **subsection (3)**:
 - i. **Subsection (3)** provides further clarity on the application of the Act and prevents the separation of the accused in a joint trial and the separation of charges which are to be tried together. Neither the prosecutor nor accused may elect to have the case determined in accordance with the Act:
 -  in the case of a joint trial unless the prosecutor elects for all the accused or all accused elect under subsection (2); or
 -  where two or more charges are tried together unless either the prosecutor or the accused elects under subsection (2) with regard to all charges

¹ <http://www.ttparliament.org/publications.php?mid=28&id=830>

² <http://www.ttparliament.org/legislations/a2011-20.pdf>

³ <http://tpparliament.org/legislations/a2019-03g.pdf>

INSTITUTION OF INDICTABLE PROCEEDINGS

7. **Clause 5** of the Bill amends **Section 6** of the Act by repealing **subsection (3)** and substituting with a new **subsection(3)** which lists examples of instances where the Director of Public Prosecutions (hereinafter referred to as “the DPP”) may prefer and file an indictment under subsection (2) including:
-  where a Coroner is of the opinion that sufficient grounds are disclosed for making a charge on indictment pursuant to **section 28** of the **Coroners Act**⁴;
 -  where a co-accused is arrested before the arraignment of an accused who has already been indicted;
 -  where the accused is charged with an offence involving serious or complex fraud;
 -  where a Magistrate was unable to complete a preliminary enquiry before the coming into force of the Act or a Master is unable to complete a sufficiency hearing due to physical or mental infirmity, resignation, retirement, death or other compelling reason, and there is sufficient evidence to put the accused on trial; or
 -  in the case of an offence of a violent or sexual nature where there is a child witness or a witness who is subject to threats, intimidation or elimination.

APPREHENSION OF ACCUSED

8. **Clause 6** of the Bill seeks to amend **Section (8)** of the Act by inserting a new **subsection (7)** which would require a person who is arrested and charged with an indictable offence to be brought before the Master or a Magistrate without delay.
9. **Clause 7** of the Bill amends **Section 8A subsections (1) and (2)** and expands the persons to whom such sections apply. Under **Section 8A(1)** as it stands currently, an accused, apprehended upon a warrant, charged with an offence triable only on indictment appears before a Magistrate who will order that they be brought before a Master as soon as practicable. Under the current **Section 8A(2)**, an accused apprehended upon a warrant and charged with an either-way offence who appears before a Magistrate, can order either that the accused appears before a Master as soon as practicable, or proceed with a view to summary trial. The proposed amendment will expand the subsections to include persons who were arrested and charged with indictable offences under **Section 8(7)** of the Act.

SUFFICIENCY HEARING

10. **Clause 8** amends **Section 19** providing that sufficiency hearings will be held unless the DPP prefers and files an indictment under **Section 6(2)** of the Act.

DISCRETION OF DPP TO PREFER INDICTMENT

⁴ Chap 6:04: https://rgd.legalaffairs.gov.tt/laws2/Alphabetical_List/lawspdfs/6.04.pdf

11. **Clause 9** of the Bill proposes to amend **Section 27** of the Act by repealing **subsection (3)** which allowed the DPP to request sufficiency hearings after filing an indictment in certain circumstances.

ADMISSIBILITY OF WITNESS STATEMENTS AT TRIAL

12. **Clause 10** of the Bill amends **Section 29** of the Act by repealing **subsection (6)** and substituting such with a new **subsection (6)** which will allow for depositions taken and exhibits admitted in proceedings instituted prior to the coming into force of this Act to be admissible as evidence at the trial of an accused.

TRANSITIONAL PROVISIONS

13. **Clause 11** of the Bill amends the Act with the insertion of a new section, **Section 32A**, which provides for the transfer of proceedings to a Master. If the prosecutor or accused elects under **Section 4(2)** the Magistrate shall order that the accused be brought before a Master as soon as practicable. If there is any summary offence, related to the indictable offence, with which the accused is also charged, the Magistrate must order, if practicable, that the offences be tried together in the High Court. The Magistrate must also issue a notice to the Registrar notifying of the offence(s) which the accused has been charged. A copy of the Notice must be filed in the High Court and served to the accused.

COMPARATIVE LEGISLATION

	JAMAICA	GRENADA	ST LUCIA	GUYANA
	Committal Proceedings Act, 2013	Criminal Procedure Code, Chapter 72B	Criminal Procedure Rules 2015, Statutory Instrument #22	Criminal Law (Procedure) Act Chapter 10:01
Definition of Indictable Offence		Indictable Offence means any offence punishable under Book III of this Code, or punishable on indictment under any other law. An Indictable Offence on conviction for which a person can without proof of his or her having been previously convicted of crime be sentenced to death, or to imprisonment with hard labour for three years or more, is a “felony” whether it be actually prosecuted summarily or on indictment.	Indictable Offence means any offence punishable on indictment under the Criminal Code Cap. 3.01 or any other enactment.	Indictable Offence means any offence punishable on indictment before the court.
Abolition of Preliminary Enquiry	Preliminary examinations or preliminary enquiry of indictable offences are abolished and in lieu thereof committal proceedings shall be held by a Resident Magistrate sitting as an examining Justice in a Petty Court.			Any person indicted for treason or felony, the jury empaneled to try him shall not be charged to inquire concerning his movable or immovable property or whether he fled for the treason or felony.

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<p>Holding of Initial Hearings</p>			<p>An initial hearing in an indictable matter shall include (a) verifying the defendant’s identity and contact information unless verified previously at an orientation session; (b) verifying the Notice of Acting if the defendant is represented; (c) reading the charges to the defendant; (d) explaining the defendant’s rights; (e) explaining the plea process and taking of the plea; (f) considering bail; (g) hearing and reviewing any applications made by the prosecution or the defendant; and (h) notifying the defendant of the next Court date at which his or her appearance is required, except that a magistrate shall not accept a plea to an indictable offence and shall forward the case to be dealt with by a judge or master.</p>	
<p>Holding of Sufficiency Hearings</p>			<p>Within sixty days of the initial hearing or such other reasonable time fixed by Court Order a sufficiency hearing shall be held before a judge or master to determine if the prosecution has disclosed sufficient evidence to meet</p>	

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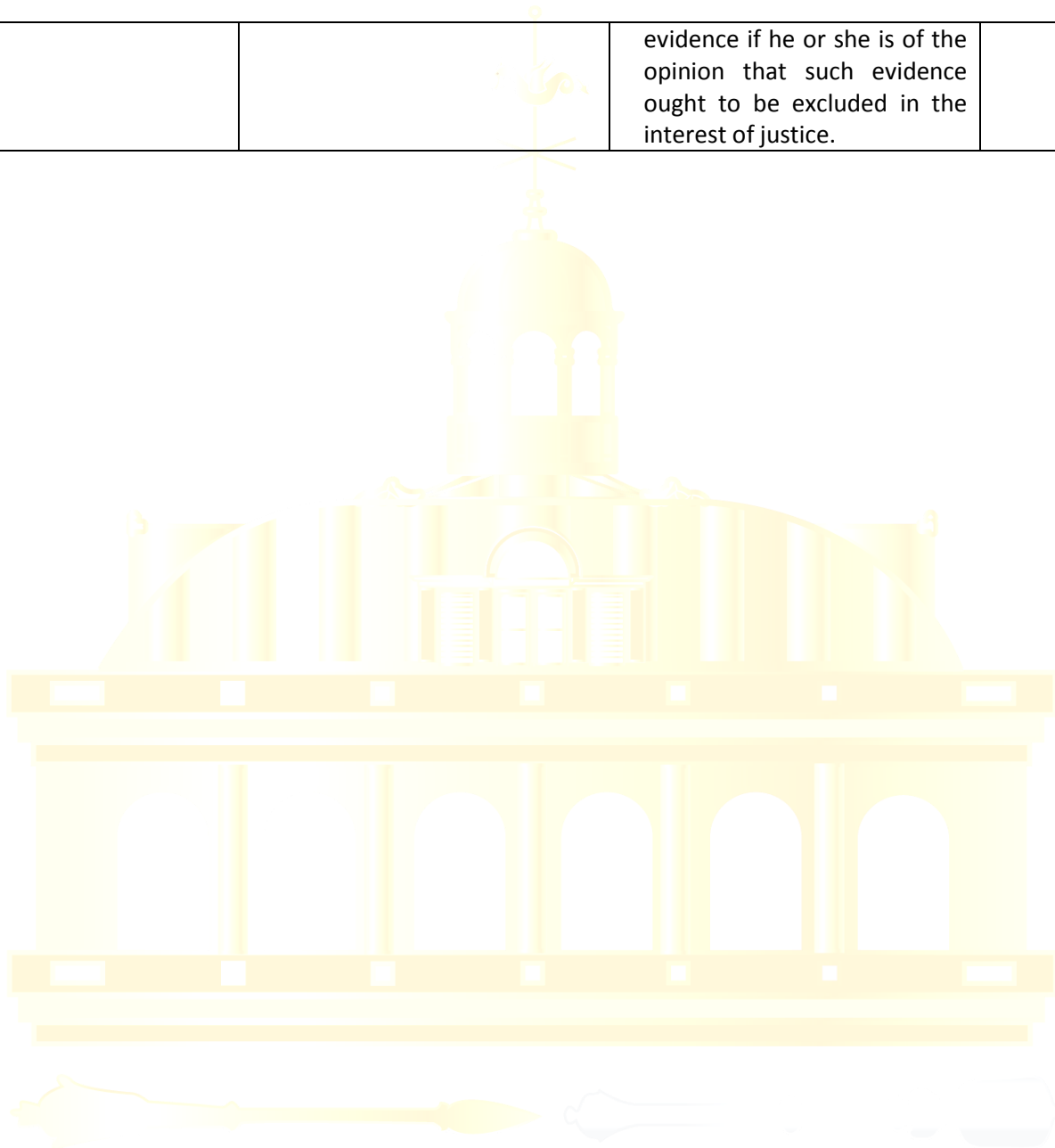
			the burden of going forward with the criminal prosecution and thereby to require the defendant to stand trial before a judge and jury. (2) At the sufficiency hearing a judge or master shall examine only such documentary evidence as the prosecution may submit including, but not limited to, the complaint, police investigation reports, and victim and witness statements.	
Institution of Indictable Proceedings	Written statements, depositions and other documents received from the Resident Magistrate by the Director of Public Prosecutions shall be kept by him until the indictment (if any) to which they relate is filed and shall then be transmitted to the proper officer of the court in which the accused is to be tried.	On the hearing of any complaint, if it appears to the Court that the case ought to be tried as an indictable offence or if the Attorney-General intimates to the Court their written opinion to that effect, all further proceedings thereon as for a summary offence shall be stayed and depositions shall be taken and the case shall in all other respects be dealt with as if the charge had been originally one for an indictable offence.	Upon any complaint or information to a magistrate that an indictable offence has been committed with respect to which he or she has jurisdiction to hold a preliminary inquiry, the magistrate shall hear and consider the allegations of the complaint and if he or she is of the opinion that a case for so doing is made out, he or she shall issue a summons or warrant, as the case may be.	On receipt of the documents relating to the preliminary enquiry, the DPP if he sees fit to do so, shall at any time institute those criminal proceedings in the Court against the accused person which to him seem legal and proper.
Accused to be brought to Court without delay		Every person arrested for any cause, whether with or without a warrant, shall be brought before a Judge or a	If there is unreasonable delay in preferring an indictment, the Presiding Judge may order dismissal of the complaint on	When any person is apprehended upon a warrant he shall be brought before a Magistrate as soon after he is so arrested as practicable, and

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		Magistrate, as the case may be, as soon as practicable.	his or her own motion or that of the defendant.	the Magistrate shall either proceed with the preliminary enquiry or postpone it to a future time.
DPP to prefer Indictment		Every indictment shall be preferred by and in the name of the Attorney General.	If the Court commits a defendant to stand trial, the Director of Public Prosecutions may prefer an indictment or may decline to prefer an indictment.	On receipt of the documents relating to the preliminary enquiry, the DPP if he sees fit to do so, shall at any time institute those criminal proceedings in the Court against the accused person which to him seem legal and proper. The indictment against the accused person may include either in substitution for or in addition to counts charging the offence for which he was committed, any counts founded on facts or evidence disclosed in any examination or deposition taken before a Magistrate in his presence, being counts which may lawfully be joined in the same indictment.
Admissibility of witness statement at Trial	In committal proceedings, a written statement by any person shall, if the conditions mentioned are satisfied, be admissible as evidence to the like effect as oral evidence by that person.	The statement of the accused made shall be received in evidence upon its mere production without further proof thereof by the Supreme Court before which he or she is brought for sentence.	Witness statements submitted to the Court and used in a sufficiency hearing shall, if certain conditions are satisfied, be admissible as evidence to the like extent as oral evidence to the like effect by that person at trial but the judge may exclude such	

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			evidence if he or she is of the opinion that such evidence ought to be excluded in the interest of justice.	
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REFERENCES

RELATED LEGISLATION

- **Administration of Justice Indictable Proceedings Act No. 20 of 2011**
<http://www.ttparliament.org/legislations/a2011-20.pdf>
- **The Administration of Justice (Indictable Proceedings) (Amendment) Act, 2019**
<http://ttparliament.org/legislations/a2019-03g.pdf>
- **Coroners Act- Chap 6:04**
https://rgd.legalaffairs.gov.tt/laws2/Alphabetical_List/lawspdfs/6.04.pdf

COMPARATIVE LEGISLATION

JAMAICA

- **Committal Proceedings Act, 2013**
https://japarliament.gov.jm/attachments/339_The%20Committal%20Proceedings%20Act,%202012.pdf

GRENADA

- **Criminal Procedure Code, Chapter 72B**
<http://www.easterncaribbeanlaw.com/wp-content/uploads/2014/08/Microsoft-Word-Cap72B-Criminal-Procedure-Code.doc.pdf>

ST LUCIA

- **Criminal Procedure Rules 2015, Statutory Instrument No. 22**
<https://www.eccourts.org/wp-content/uploads/2019/01/S.I.-22-of-2015.pdf>

GUYANA

- **Criminal Law (Procedure) Act Chapter 10:01**
https://www.oas.org/juridico/spanish/mesicic2_guy_criminal_proc_act.pdf



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