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No. 5 of 2019

Fourth 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. 2) BILL, 2019

Explanatory Notes

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

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

Clause 3 of the Bill would amend section 3 of the Act by including a person who is charged with an indictable offence in the definition of “accused”. Consequently, a person whom a police officer arrests without first filing a complaint and obtaining an arrest warrant and who is charged with an indictable offence, would be regarded as an accused.

Section 4(2) of the Act permits the prosecutor or an accused to elect to have proceedings which commenced before the coming into force of the Act, determined in accordance with the Act. Clause 4 of the Bill would amend section 4 of the Act to prevent the separation of the accused in a joint trial and the separation of charges which are to be tried together. Consequently, the option to have proceedings which commenced before the coming into force of the Act, determined in accordance with the Act would not be available in the case of a joint trial unless the option is exercised in respect of all the accused. Similarly, the option would not be available where two or more charges are to be tried together unless the option is exercised in respect of all the charges. Clause 4 of the Bill would also amend section 4(2) of the Act by making reference to the new section 32A which would be inserted by clause 11 of the Bill and would provide for the transfer of proceedings to a Master where the option is successfully exercised.

Clause 5 of the Bill would amend section 6 of the Act to remove the requirement for an accused against whom an indictment has been preferred, to appear before a Master. Hence, once an indictment is filed, the accused would appear before a Judge with a view to the commencement of a trial. Further, a new section 6(3)

would set out several examples of the circumstances in which the Director of Public Prosecutions may file an indictment, whether or not a complaint has been filed, but these examples would not limit the power of the Director of Public Prosecutions to file an indictment. These circumstances are listed in section 27(3) of the Act which would be repealed by clause 9 of the Bill.

Clause 6 of the Bill would amend section 8 of the Act by inserting a new subsection (7) which would require the police to bring a person who is arrested and charged with an indictable offence before a Master without delay and as soon as practicable, or if this is not possible, before a Magistrate.

Clause 7 of the Bill would amend section 8A of the Act to include references to the new section 8(7). This is necessary in order to ensure that the procedure to be followed when an accused is brought before a Magistrate would apply to a person who is arrested and charged with an indictable offence and brought before a Magistrate under the new section 8(7).

Clause 8 of the Bill would amend section 19 of the Act to make it clear that a sufficiency hearing would not be held by a Master where the Director of Public Prosecutions prefers and files an indictment under section 6(2) of the Act.

As indicated above, clause 9 of the Bill would repeal section 27(3) of the Act which allows for the Director of Public Prosecutions to request the holding of a sufficiency hearing after the filing of an indictment.

Clause 10 of the Bill would amend section 29 of the Act to allow depositions taken and exhibits admitted in proceedings instituted prior to the coming into force of the Act, to be admissible as evidence at the trial of an accused.

Finally, as mentioned above, clause 11 of the Bill would amend the Act by inserting a new section 32A which would provide for the transfer of proceedings to a Master where an option under section 4(2) of the Act is successfully exercised.

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. 2)
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 of the Act is amended in the definition of “accused” by inserting after the word “means”, the words “a person who is charged with an indictable offence or”

Section 4 amended

4. Section 4 of the Act is amended—

(a) in subsection (2)—

(i) by deleting the word “Where” and substituting the words “Subject to subsection (3), where”; and

(ii) by deleting the words “where evidence has been led, the Magistrate shall transmit the record of the proceedings and all relevant evidence to a Master” and substituting the words “section 32A shall apply accordingly”.

(b) by inserting after subsection (2), the following subsections:

“ (3) Subsection (2) shall not apply—

(a) in the case of a joint trial, unless—

(i) the prosecutor elects under subsection (2) in respect of all the accused; or;

(ii) all the accused elect under subsection (2); or

(b) where two or more charges are to be tried together, unless—

(i) the prosecutor elects under subsection (2) in respect of all the charges; or

(ii) the accused elects under subsection (2) in respect of all the charges.”

5. Section 6 of the Act is amended by repealing sub-section (3) and substituting the following subsection: Section 6 amended

“ (3) Without limiting the generality of subsection (2), the Director of Public Prosecutions may prefer and file an indictment under subsection (2)—

(a) where at the close of an inquest, a Coroner is of the opinion that sufficient grounds are disclosed for making a charge on indictment against any person pursuant to section 28 of the Coroners Act;

(b) where a co-accused is arrested at any time before the arraignment of an accused who has already been indicted and it is desired to join them both in the same indictment;

(c) where the accused is charged with an offence involving serious or complex fraud;

- (d) where a Magistrate was unable to complete a preliminary enquiry before the coming into force of this Act, or a Master is unable to complete a sufficiency hearing, because of his—
- (i) physical or mental infirmity;
 - (ii) resignation;
 - (iii) retirement;
 - (iv) death; or
 - (v) inability for any other compelling reason,
- and the evidence filed before the Master discloses, in the opinion of the Director of Public Prosecutions, sufficient evidence to put the accused on trial; or
- (e) in the case of an offence of a violent or sexual nature and where there is a child witness, or an adult witness who has been assessed as one subject to threats, intimidation or elimination.”.

Section 8 amended

6. Section 8 of the Act is amended—

- (a) in the marginal note, by deleting the words “Warrant for apprehension” and substituting the word “Apprehension”; and
- (b) by inserting after subsection (6), the following subsection:
 - “ (7) A person who is arrested and charged with an indictable offence shall, without delay and as soon as practicable after he is arrested, be brought before a Master or, where this is not possible, a Magistrate.”.

7. Section 8A of the Act is amended— Section 8A amended

- (a) in subsection (1), by inserting after the word “8(6)”, the words “or (7)”; and
- (b) in subsection (2), by inserting after the word “8(6)”, the words “or (7)”.

8. Section 19(1) of the Act is amended by inserting Section 19 amended after the word “offence”, the words “, unless the Director of Public Prosecutions prefers and files an indictment under section 6(2)”.

9. Section 27 of the Act is amended— Section 27 amended

- (a) in subsection (1), by deleting the words “subsections (2) and (3)” and substituting the words “subsection (2)”; and
- (b) by repealing subsection (3).

10. Section 29 of the Act is amended by repealing sub- Section 29 amended section (6) and substituting the following subsection:

“ (6) Depositions taken and exhibits admitted in proceedings instituted prior to the coming into force of this Act shall be admissible as evidence at the trial of an accused.”.

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

^{“Transitional provisions} **32A.** (1) Subject to section 4(3), where the prosecutor or an accused elects under section 4(2) to have a case determined in accordance with this Act, the Magistrate shall order that the accused be brought, as soon as practicable, before a Master to be dealt with in accordance with Part II.

(2) Where a Magistrate makes an order under subsection (1), the Magistrate shall, where it is reasonably practicable to do so, order that any summary offence with which the accused is charged and

which appears to the Magistrate to be related to the indictable offence, be tried in the High Court together with the indictable offence.

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

- (a) a copy of the notice to be filed in the High Court and served on the accused; and
- (b) a copy of the record of the proceedings in the Magistrates' Court and all relevant evidence to be filed in the High Court.

(4) Where an order is made under subsection (2), the Magistrate shall, in the notice under subsection (3), specify the offences which appear to the Magistrate to be related to each other.

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

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

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

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. 5. of 2019

FOURTH SESSION
ELEVENTH PARLIAMENT
REPUBLIC OF
TRINIDAD AND TOBAGO

BILL

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

Received and read the

First time.....

Second time.....

Third time.....