



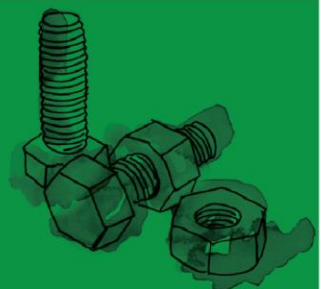
Secretariat Unit

# Bill Essentials

## The Indictable Offences (Committal Proceedings) Bill 2014

**A Bill relating to committal proceedings in respect of indictable offences by Magistrates and for ancillary matters.**

Bill no: HOR Bill 11 of 2014  
Introduced in: The House of Representatives  
Introduced by: Senator Anand Ramlogan [Attorney General]  
Introduced on: 9<sup>th</sup> May, 2014  
Date published in the Gazette:



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## BACKGROUND

The Indictable Offences (Committal Proceedings) Bill, 2014, was introduced and read a first time in the House of Representatives on May 9<sup>th</sup>, 2014 by the Attorney General.

### The following provides a list of previous amendments to the Indictable Offences (Preliminary Enquiry) Act Chap 12:01<sup>1</sup>

Bill	Details	Notes
The Indictable Offences (Preliminary Enquiry) (Amendment) Act, 2005 <sup>2</sup>	An Act to amend the Indictable Offences (Preliminary Enquiry) Act, Chap.12:01 seeks to modify the amendments to the Indictable Offences (Preliminary Enquiry) Act, Chap. 12:01, which were introduced in 1994 (Act No. 20 of 1994) to provide for the committal of accused persons on the basis of written statements submitted by the prosecution to the enquiring Magistrate.	Act 23 of 2005 was laid in the HoR and Senate on July 11 <sup>th</sup> , 2005 and August 24 <sup>th</sup> , 2005 respectively and assented to on September 15 <sup>th</sup> , 2005.
The Indictable Offences (Preliminary Enquiry)(Amendment)	An Act to amend the Indictable Offences (Preliminary Enquiry) Act,	

<sup>1</sup> [http://rgd.legalaffairs.gov.tt/laws2/alphabetical\\_list/lawspdfs/12.01.pdf](http://rgd.legalaffairs.gov.tt/laws2/alphabetical_list/lawspdfs/12.01.pdf)

<sup>2</sup> <http://www.ttparliament.org/legislations/a2005-23.pdf>

Bill, 1996	Chap. 12:01 was assented to on March 29 <sup>th</sup> , 1996	
The Miscellaneous Provisions (Remand) Act, 2010 <sup>3</sup>	An Act to amend the Summary Courts Act, Chap. 4:20 and the Indictable Offences (Preliminary Enquiry) Act, Chap. 12:01	Act no. 4 of 2011 was passed in the HoR and Senate on January 19 <sup>th</sup> , and March 2 <sup>nd</sup> , 2011 respectively and assented to March 4 <sup>th</sup> , 2011.
The Administration of Justice (Indictable Proceedings) Bill, 2011 <sup>4</sup>	<b>An Act to repeal and replace the Indictable Offences (Preliminary Enquiry) Act, Chap. 12:01 and to provide for a system of pre-trial proceedings relating to indictable offences and other related matters.</b>	Act no. 20 of 2011 was passed in the HoR and Senate on November 18 <sup>th</sup> , 2011 and November 29 <sup>th</sup> , 2011. However, Senate amendments agreed to by the HoR on December 9 <sup>th</sup> , 2011. The Act was assented to on December 16 <sup>th</sup> , 2011 and Partially proclaimed on August 31 <sup>st</sup> , 2012.

**The following provides a list of previous amendments to the Administration of Justice (Indictable Proceedings) Act, No. 20 of 2011:**

Bill	Details	Notes
<b>The Administration of Justice (Indictable</b>	An Act to amend the Administration of Justice	Act No. 15 of 2012 was passed in the HoR and

<sup>3</sup> <http://www.ttparliament.org/legislations/a2011-04.pdf>

<sup>4</sup> <http://www.ttparliament.org/legislations/a2011-20.pdf>

<b>Proceedings) (Amendment) Bill, 2012<sup>5</sup></b>	(Indictable Proceedings) Act, 2011	Senate on September 12 <sup>th</sup> , and 13 <sup>th</sup> , 2012 respectively and was assented to on September 14 <sup>th</sup> , 2012
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<sup>5</sup> <http://www.ttparliament.org/legislations/a2012-15.pdf>

## **PURPOSE OF THE BILL**

### **What the Bill seeks to do?**

*The Bill will seek to:*

- *repeal the Indictable Offences (Preliminary Enquiry) Act, Chapter 12:01 ;*
- *repeal the Administration of Justice (Indictable Proceedings) Act, No. 20 of 2011; and*
- *provide for indictable offences.*

## Legislation mentioned in the Bill

- Indictable Offences (Preliminary Enquiry) Act, Chapter 12:01<sup>6</sup>
- Administration of Justice (Indictable Proceedings) Act, No. 20 of 2011<sup>7</sup>
- Summary Courts Act, Chap 4:20<sup>8</sup>
- Prisons Act, Chap 13:01<sup>9</sup>
- Bail Act, Chap 4:06<sup>10</sup>
- Children's Act Chapter 46:01<sup>11</sup>
- Coroners Act Chap 6:04<sup>12</sup>
- Criminal Procedure Act Chap 12:02<sup>13</sup>
- Evidence Act Chap 7:02<sup>14</sup>
- Evidence (Amendment) Act, 2007<sup>15</sup>
- Supreme Court of Judicature Act Chap.4:01<sup>16</sup>
- Legal Aid and Advice Act, Chap 7:07<sup>17</sup>
- Criminal Procedure (Corporations) Act, Chap 12:03<sup>18</sup>

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<sup>6</sup> [http://rgd.legalaffairs.gov.tt/laws2/alphabetical\\_list/lawspdfs/12.01.pdf](http://rgd.legalaffairs.gov.tt/laws2/alphabetical_list/lawspdfs/12.01.pdf)

<sup>7</sup> <http://www.ttparliament.org/legislations/a2011-20.pdf>

<sup>8</sup> [http://rgd.legalaffairs.gov.tt/laws2/alphabetical\\_list/lawspdfs/4.20.pdf](http://rgd.legalaffairs.gov.tt/laws2/alphabetical_list/lawspdfs/4.20.pdf)

<sup>9</sup> [http://rgd.legalaffairs.gov.tt/laws2/alphabetical\\_list/lawspdfs/13.01.pdf](http://rgd.legalaffairs.gov.tt/laws2/alphabetical_list/lawspdfs/13.01.pdf)

<sup>10</sup> [http://rgd.legalaffairs.gov.tt/laws2/alphabetical\\_list/lawspdfs/4.60.pdf](http://rgd.legalaffairs.gov.tt/laws2/alphabetical_list/lawspdfs/4.60.pdf)

<sup>11</sup> [http://rgd.legalaffairs.gov.tt/laws2/alphabetical\\_list/lawspdfs2/46.01.pdf](http://rgd.legalaffairs.gov.tt/laws2/alphabetical_list/lawspdfs2/46.01.pdf)

<sup>12</sup> [http://rgd.legalaffairs.gov.tt/laws2/alphabetical\\_list/lawspdfs/6.04.pdf](http://rgd.legalaffairs.gov.tt/laws2/alphabetical_list/lawspdfs/6.04.pdf)

<sup>13</sup> [http://rgd.legalaffairs.gov.tt/laws2/alphabetical\\_list/lawspdfs/12.02.pdf](http://rgd.legalaffairs.gov.tt/laws2/alphabetical_list/lawspdfs/12.02.pdf)

<sup>14</sup> [http://rgd.legalaffairs.gov.tt/laws2/alphabetical\\_list/lawspdfs/7.02.pdf](http://rgd.legalaffairs.gov.tt/laws2/alphabetical_list/lawspdfs/7.02.pdf)

<sup>15</sup> <http://www.ttparliament.org/legislations/a2007-05.pdf>

<sup>16</sup> [http://rgd.legalaffairs.gov.tt/laws2/alphabetical\\_list/lawspdfs/4.01.pdf](http://rgd.legalaffairs.gov.tt/laws2/alphabetical_list/lawspdfs/4.01.pdf)

<sup>17</sup> [http://rgd.legalaffairs.gov.tt/laws2/alphabetical\\_list/lawspdfs/7.07.pdf](http://rgd.legalaffairs.gov.tt/laws2/alphabetical_list/lawspdfs/7.07.pdf)

<sup>18</sup> [http://rgd.legalaffairs.gov.tt/laws2/alphabetical\\_list/lawspdfs/12.03.pdf](http://rgd.legalaffairs.gov.tt/laws2/alphabetical_list/lawspdfs/12.03.pdf)

## Key Features of the Proposed Legislation:

The Bill consists of fifty (50) clauses which are divided into six (6) parts and five (5) Schedules. The following is a summary of the provisions in the Bill:

### **PART I – PRELIMINARY**

1. Provides that the Act will come into operation on the date as stipulated by the President by Proclamation.
2. Provides for a reference to a deposition in any written law or criminal proceedings in relation to a preliminary enquiry or committal proceedings to be interpreted as a reference to any statement admitted in evidence in committal proceedings under the Act.
3. Allows Justices to exercise parallel authority with Magistrates to issue search warrants under the Act, receive complaints, issue a warrant or summons, grant bail in accordance with the Bail Act, remand the accused person in custody and administer oaths.
4. Requires a Magistrate to endorse a warrant (search warrant, summons and warrant) directing that the person be arrested, or the thing seized be brought before a Magistrate.
5. Empowers a Magistrate to issue a summons or warrant to compel a person who is accused of committing an indictable offence which is triable by law in force in Trinidad and Tobago whether locally or externally to appear before him.

### **PART II- SEARCH WARRANTS, SUMMONS AND WARRANTS**

6. Empowers a Magistrate to issue a warrant at any time on any day including Saturdays, Sundays, or public holidays, authorising any constable to search and seize any building, ship, vessel, vehicle, box, receptacle, or place:
  - a. upon or in respect of which an indictable offence has been or is suspected to have been committed,
  - b. will provide evidence on any such offence;
  - c. is intended to be used for the purpose of committing any indictable offence against the person.
7. Also provides for everything seized or detained in the execution of a warrant to be brought before any Magistrate whether specified in the warrant or not.



8. Provides for seized item/s to be detained by the Magistrate, taking reasonable care that it is preserved by placing the item/s in the custody of the police or another appropriate body until the end of the committal proceedings. The Magistrate may order that the item/s seized be further detained as evidence where a person is committed for trial.
9. Provides for the Magistrate to direct that the item/s seized be restored to the relevant person unless the Magistrate authorises or it is required by law that the thing be disposed of where a person is **not** committed for trial or where the item/s does not constitute as evidence in any other criminal proceeding.
10. Allows the Magistrate to order that any forged bank note, bank note paper, instrument, or other thing which is considered an indictable offence according to any written law for the time being in force to be destroyed **if there is no commitment for trial**.
11. Where a search is executed for any explosive or dangerous or noxious substance or thing such person is deemed to have the same powers and protections granted by the Act to any person lawfully authorized to conduct a search.
12. Stipulates that the Constable executing a warrant can seize and retain anything other than items subject to legal privilege which is likely to be of substantial value to the investigation.
13. Provides that any written law regarding the procedure for the execution of a search warrant pertaining to computer system be applied.
14. Provides that a written complaint to a Magistrate or Justice regarding an indictable offence be considered and where a case is made out a summons or warrant be issued in accordance with the Act.
15. Provides that where a complaint is made in writing and upon oath, a Magistrate may initially, issue a warrant for the apprehension of the accused person at any time and on any day, if he believes that a case is made out, taking into consideration the nature and seriousness of the offence, the likelihood of the accused person evading service of a

summons, the character, antecedents, associations and social ties of the accused person; and any other factor which appears to be relevant.

16. Empowers the Magistrate to issue a warrant in cases where a summons has also been issued.
17. Provides for a warrant to be issued in cases where an accused person does not appear or wilfully avoids the service of a summons.
18. Allows a Magistrate to issue a summons even though a complaint in writing is not upon oath.
19. Provides for a summons to be directed to the accused person outlining the required time and place for his appearance and not be signed in blank.
20. Requires a summons to be served by a constable upon an accused person by personally delivering it or leaving it with an adult from his last or usual place of residence in the case where the accused cannot be found.
21. Requires a constable who served a summons to also be present at the time and place outlined in it, in order to prove that he served the summons, if necessary. However, in the constable's absence, a Magistrate may in his discretions receive proof of service via affidavit.
22. Allows a person who has been arrested via a warrant issued by a Magistrate for any offence with the exception of those outlined in Part I of the First Schedule of the Bail Act Chap 4:60 to be granted bail subject to the provisions of the Bail Act and this Act.
23. Provides that in granting such bail that the warrant be endorsed with a direction stating that that the arrested person is to be released on bail subject to a duty to appear before the Court at the time specified in the endorsement and declaring the amount in which any surety is to be bound.

24. Provides that an officer in charge of the relevant police station where a person is arrested upon a warrant which has been endorsed for bail, **may** release the person from custody in accordance with the endorsement.
25. Requires a person arrested upon a warrant to be brought before a Magistrate as soon as practicable who will either proceed with the committal proceeding or postpone it to a future date.
26. Provides that the Magistrate may grant the apprehended bail or commit him to prison in the case where committal proceedings are **postponed**.
27. Provides that the **validity** of any proceeding **during or after the hearing** will not be affected by any:
  - a. irregularity or defect in the substance or form of the complaint, summons, or warrant;
  - b. variance between the charge contained in the summons or warrant;
  - c. charge contained in the complaint; or
  - d. evidence presented on the part of the prosecution at committal proceedings.
28. Provides that committal proceeding may be held notwithstanding any irregularity, illegality, defect or error in the summons or warrant, or the issuing , service or execution of same or defect in the complaint or any irregularity or illegality in the arrest or custody of the accused person.
29. Provides that where there is any irregularity, illegality or defect in any summons, warrant, complaint, or arrest or custody of any person, the Magistrate make any necessary amendments or adjourn the case where such irregularity or illegality or defect has deceived or misled the accused.
30. Provides for an accused person who is not released on bail to be remanded in custody to a prison by way of a warrant on the **form provided for in Schedule 2**.
31. Stipulates that an accused person **shall not be remanded** unless a complaint on oath was taken or a warrant was issued under section 8.

32. Allows the Magistrate to order that the period of remand be **extended** for no longer than **twenty-eight (28) days** if he so decides where an accused person is unable to appear before the Court at the adjournment due to an illness or an accident.

### 33. PART III – COMMITTAL PROCEEDINGS

34. Allows for committal proceedings to be held in cases **where a charge is not triable summarily**.

35. Outlines the procedure for committal proceedings which are to begin by filing and tendering into evidence by the prosecutor in the Magistrate's court of witness statements in support of the charge, a copy of any documentary exhibit and a list of exhibits if any, which the prosecutor intends to produce.

36. Requires the prosecutor to immediately serve on the accused person or his legal representative copies of statements, documentary exhibits and the list of filed exhibits.

37. Allows an accused who has been served statements, documentary exhibits and the list of filed exhibits **to reply by filing a statement of evidence he wishes to give on his own behalf** at trial, **any statement of his witnesses** and a copy of all documentary exhibits and a list of exhibits in connection with the proceedings which the accused intends to produce within the period specified by a Magistrate.

38. Provides that failure by the accused to file any statement, documentary exhibits or list of exhibits within the time specified by the Magistrate does not affect the Magistrate's power to proceed with and conclude the committal proceedings or to take any other action permitted by this Act.

39. Requires the Magistrate **to cause a copy of the reply** filed by the accused to be served on the prosecutor.

40. Stipulates that where the accused is legally represented, **the legal representative is required** to immediately forward a copy of any filed reply to the prosecutor.

41. Provides that a Magistrate may commit the accused for trial for an indictable offence after considering the evidence of the State alone, or after the consideration of the evidence of both the State and the accused.
42. Requires the Magistrate to give the prosecutor or the accused person **the opportunity to show cause** why a committal order or any order under section 24 should not be made.
43. Allows a Magistrate **to adjourn committal proceedings** to a certain date and place as he considers expedient.
44. Allows a Magistrate **to grant bail** to the accused **or to remand** him to custody for no longer than twenty-eight (28) clear days unless the accused and prosecutor consents.
45. Allows for the extension of the period of remand in cases where the Magistrate is satisfied that the accused is unable to appear personally as a result of illness or an accident or other sufficient cause.
46. Stipulates that a statement by any person filed under Sections 14 and 15 can be admissible as evidence as though it is oral evidence, if it is signed by the person who made it, the statement was sworn before a Justice of the Peace and authenticated by a Certificate with the JPs signature in the case of a child under fourteen years, or if the statement contained a declaration by that person that it was true to the best of his knowledge and belief and that it was made under the knowledge that if it were tendered into evidence he/she would be liable to prosecution if anything in it was falsely stated.
47. Requires the Magistrates signature and the words “treated as inadmissible” to be written against parts of the statements that the Magistrate is of the opinion is inadmissible. Also, requires that a label or other mark of identification be used where it is impossible to write directly on the statement.
48. Provides for a statement made by a person under the age of eighteen to be recorded in the presence of an adult of his choice and must state his age and that the adult of his choice was present with him when the statement was made.

49. Provides that notwithstanding Section 19 of the Children's Act, Chap 46:01, a statement made by a child under fourteen years of age is to be supported by a statement from a probation officer, child psychiatrist or any other person qualified to make an assessment of the child to determine whether the child has sufficient intelligence to justify the reception of his statement as evidence and understands the duty of speaking the truth.
50. Provides for a statement made by an illiterate person to be recorded on his behalf and read aloud to him or otherwise effectively communicated to him before he signs or puts his mark and to be accompanied by a declaration stating that this has been done.
51. Provides for a statement made by a person who does not speak the English language to be taken through an interpreter and recorded on his behalf, read aloud and translated to him in English before he signs it or makes his mark thereon and be accompanied by a declaration stating that this was done.
52. Provides for any document or object referred to as an exhibit and identified in a statement tendered as evidence under Section 14 and 15 to be treated as if it had been produced as an exhibit and identified in Court by the maker of the statement.
53. Requires exhibits produced to the Magistrate by the prosecutor or the accused to be **duly marked** at the hearing of the committal proceedings.
54. Provides for documentary exhibits to be kept safe in the custody of the Clerk of the Peace under the direction of the Magistrate unless the Magistrate otherwise directs, while all other exhibits are to be taken charge of by the police in order to be produced at the trial.
55. Requires an accused who intends **to rely on an alibi** in his defence **to file a notice of alibi** at the beginning of committal proceedings subsequent to being served documents by the prosecutor outlining the name and address of any witness in support of the alibi or where the address is not known, any information the accused has which might be of material assistance in finding the witness.
56. Provides that the Magistrate may permit the prosecutor or accused on application **to file further evidence** within such period as may be **specified by the Magistrate**; further

evidence filed is to be served on the other party and treated in the same manner as documents filed under Sections 14(2) and 15(1).

57. Stipulates that all statements filed, documentary exhibits and list of exhibits admitted as evidence shall be signed and stamped by the presiding Magistrate.

#### **PART IV – DISCHARGE AND COMMITTAL**

58. . Provides that the Magistrate may commit the accused to trial in the High Court, discharge the accused, make an order for his release if he is in custody or make any other order in relation to the case, the charge or the accused at the end of the tendering of all evidence and the hearing of any submissions.

59. Allows the Magistrate, where he has committed an accused **for trial in the High Court**, to commit the accused to prison until delivered in due course of law or grant the accused **bail** in accordance with the Bail Act and direct him to appear before the High Court for trial.

60. Provides that where bail is **conditioned on the accused providing a surety** and the Magistrate fixes the amount in accordance with Section 16 of the Bail Act, the accused is committed to prison until delivered in due course of law.

61. Provides that nothing in Section 25 is to be interpreted as preventing a Magistrate from granting bail to an accused person where the offence charged is of a bailable nature.

62. Allows the Director of Public Prosecutions to make a request of the Magistrate for the record of proceedings within twenty-one days of the discharge of an accused.

63. Requires the DPP to apply to a High Court Judge within three months after receiving the record of the proceedings for a warrant for the arrest and committal for trial of the accused if on perusing and considering the evidence, it is believed that the accused person should not have been discharged.

64. Requires leave of the Judge to be sought for any request or application made outside the time specified.

65. Allows a High Court Judge who is of the opinion that the evidence given before the Magistrate **was sufficient** to put the accused on trial, **to issue a warrant for the arrest and imprisonment** of the accused for trial **until he is discharged** in due course of law or **granted bail**.
66. Provides that where additional evidence in support of the offence becomes available subsequent to the discharge of an accused person, DPP may refer a case back to the Magistrate, **directing him to re-open** the committal proceedings in order to take further evidence.
67. Allows the DPP to prefer an indictment whether or not committal proceedings have taken place in the following instances:
- a. where at the close of an inquest, a coroner<sup>19</sup> is of the view that sufficient grounds are disclosed for making a charge on indictment in accordance with Section 28 of the Coroners Act Chap 6:04.
  - b. where it is desired to join a co-accused (who was arrested subsequent to the co-offender committal to stand trial) and a co-offender in the same indictment.
  - c. where a person is charged with serious or complex fraud.
  - d. where the evidence filed before the Magistrate discloses a prima facie case is made, but the Magistrate is unable to complete the committal proceedings because of his physical or mental infirmity, resignation, retirement or death.
  - e. where the offences are of a violent or sexual nature and where there is a child witness, or an adult witness who has received threats, intimidation or elimination.
68. Provides that an appeal against a decision of the Court under section 26(2) shall lie to the Court of Appeal as of right.

## **PART V- PROCEEDINGS AFTER COMMITTAL**

69. Requires the Magistrate to, no later than three months from the end of the committal proceedings and the warrant of commitment for trial has been issued, forward the complaint, statements of the witnesses from both the prosecution and defence,

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<sup>19</sup> A coroner is a government official who investigates, confirms and certifies the death of an individual within a jurisdiction.



documentary exhibits and lists of exhibits, any statement of the accused person and the warrant of commitment for trial to the DPP who is required to keep the documents until the indictment, if any and forward them to the Registrar of the Supreme Court who in turn is required retain and submit them to the Court at the trial of the accused person.

70. Provides that the person committed to trial may be indicted not only for the original offence but for any offence disclosed by the evidence in committal proceedings.
71. Requires the DPP to file any indictment within nine months of receipt of the documents and provides that the Criminal Procedure Act Chap 12:02 be applied to such an indictment.
72. Provides that where any procedural defect has occurred during the course of committal proceedings, an indictment may also be preferred by the DPP on the direction of or with the consent of a Judge of the High Court Judge or Court of Appeal.
73. Provides for an application to be made to a High Court Judge to prefer an indictment where the proceedings have been completed and consequently a procedural defect is discovered which makes the committal proceedings null and void.
74. Provides that a Judge of the High Court or Court of Appeal may consider representations of the DPP and the accused before directing or consenting to the preferring of an indictment where subsequent to committal proceedings the complaint, witness statements, documentary exhibits, or the warrant of committal is lost or destroyed.
75. Requires the loss or destruction of the original documents be proved by the testimony of the officer in whose charge the document was last entrusted.
76. Provides for the ways in which copies of private or public documents may be authenticated.
77. Where an original document or statement is destroyed, a copy of such certified by a Clerk of the Peace or by the committing Magistrate shall be regarded as the original document or statement.
78. When additional evidence is disclosed after committal, this new evidence may be given as fresh evidence at trial if Notice is given to the Court and the accused.

79. Provides for reopened committal proceedings to be held in the same way and with the same consequences as original committal proceedings.
80. Allows the DPP to refer a case back to the Magistrate with a direction to deal with the case summarily if the DPP is of the view that the accused should not have been committed for trial. Directions from the DPP in this regard must be in writing and signed by him. The Magistrate must comply with such directions but the DPP may add to, alter, or revoke any directions.
81. Provides for the following provisions to have effect where the DPP directs that the committal proceedings be re-opened or that a case be dealt with summarily:
- a. requires the Magistrate by written order to direct the Keeper of the prison to convey the accused or cause him to be conveyed to the place specified in the order where an accused person in custody; or
  - b. requires the Magistrate to issue a summons for the accused person who is on bail to be present at a specified time and place stated in the summons; and
  - c. allows proceedings to continue under the Summary Courts Act Chap 4:20 in the same manner as if the Magistrate had formed an opinion in terms of Section 94 of that Act.
82. Provides the procedure to be followed when an accused whom is represented by an Attorney-at-law admits to the Magistrate that he is guilty of the charge except when the charge is treason or murder.
83. Outlines the procedure to be followed where the accused admits his guilt by answering in the negative when asked if he wishes witnessed to appear to give evidence against him. This entails:
- a. recording in writing the accused response and reading it to him;
  - b. the magistrate, accuse person and his Attorney signing the response;
  - c. the response being kept with the statements of witnesses;
  - d. the Magistrate committing the accused for sentence before the High Court;
  - e. the Magistrate by warrant committing the accused person to prison to be safely kept until the Court hearing or until he is admitted bail or delivered by due course of law;
  - f. the forwarding of the record or the proceedings to the DPP by the Magistrate as soon as practicable; and

- g. the DPP preferring and filing in the High Court an indictment against the accused within four months of the committal for sentence.
  
- 84. Provides that where an accused person is committed for trial or sentencing and is granted bail, recognizance of bail is to be taken in writing and signed by the accused and sureties or by the accused alone, in the Magistrate's discretion in accordance with the Bail Act.
  
- 85. Provides for the conditions of the recognizance as follows:
  - a. the accused person has to appear before the Court at any time from the date of recognizance to answer to any indictment that may be filed against him in the Court;
  - b. the accused must not exit the Court without leave of the Court; and
  - c. the accused must accept service of any indictment at some place to be named in such condition.
  
- 86. Where an accused is committed for trial or sentence and not released on bail, a constable must convey him to prison with a warrant of commitment to the Keeper of the prison who would issue a receipt for the accused outlining his condition when he was delivered into the custody of the Keeper.
  
- 87. Provides that it is not required to address any warrant of commitment to the Keeper of the prison; however, the Keeper is required to receive and detain the accused person as named in the warrant or continue to detain him if already in custody for the period and purpose stipulated in the warrant, upon its delivery.
  
- 88. In cases of adjournments or remands, requires the Keeper to present the accused before the Magistrate at the time and place fixed by the warrant where there is an adjournment.
  
- 89. Allows the Magistrate to endorse on the warrant of commitment or on a separate paper, a certificate of his consent to the accused person being bailed, stating the amount of bail required if the accused could not procure sufficient sureties to take his bail at the time of his committal. Subsequently, any Magistrate or Justice may grant an accused bail upon the production of said certificate and order him to be discharged by a warrant of deliverance.

90. Allows the Magistrate to make a duplicate of the certificate where it is inconvenient for a surety or sureties to be present at the prison to join the accused person in the recognizance of bail.
91. Allows a High Court Judge **to at any time grant an accused bail** in accordance with the Bail Act and provides that the recognizance of bail may, if the Judge directs, be taken before any Magistrate. If bail is granted and subsequently **there is reason to believe the accused is about to abscond in order to evade justice**, the Magistrate may issue a warrant for his apprehension and imprisonment until his trial or until he produces another sufficient surety or sureties.
92. Allows a Magistrate to **revoke bail** granted to an accused where he is subsequently indicted by the DPP for an offence not bailable by a Magistrate.
93. Allows a Judge or Magistrate to issue a warrant of arrest for an accused on bail if circumstances arise that would have justified **refusing bail or requiring bail of a greater amount**. A Judge or Magistrate may either imprison the accused until his trial or grant him bail for the same or an increased amount after giving him an opportunity to be heard.
94. Provides that the Commissioner of Prisons **determine which prison** persons committed under this Act would be placed in.
95. Requires the DPP to give notice to the Registrar of the Supreme Court of the names of the witnesses required to attend trial at least fourteen days before the trial date. The accused may also notify the Registrar of the names of the witnesses he wants to attend at the trial.
96. Requires the Registrar, upon receipt of a notice, to summon witnesses for the DPP and the accused in accordance with the procedures outlined in Section 17 of the Criminal Procedure Act.
97. Provides that every person committed for trial, whether bailed or not is entitled to copies of the statements, documentary exhibits and the lists of exhibits relating to the committal proceedings from the Registrar at any reasonable time.

98. Provides that sections 15C, 15D, and 15E of the Evidence Act shall apply to all statements submitted as evidence under this Act.
99. Provides that a special measure (audio-visual live television link, video recording or any other measure other than oral evidence available to the Court) apply if a witness is not in Trinidad and Tobago and it is not reasonably practical to secure hi/her attendance at trial.
100. Prohibits the printing, publishing, causing or procuring to be printed or published of any particulars of committal proceedings under the Act other than the name, address and occupation of the accused and any witnesses, a concise statement of the charge and submissions on any point of law arising in the enquiry and the decision of the Magistrate.
101. Also provides that a person who breaches this provision is liable on summary conviction in respect of each offence to a fine of ten thousand dollars and imprisonment for six months.

## **PART VI- MISCELLANEOUS**

102. Provides for that Part VI of the Summary Courts Act continue to apply to the summary trial of certain indictable offences.
103. Provides for the making of Rules, subject to negative resolution of Parliament, by the Rules Committee established under the Supreme Court of Judicature Act Chap 4:01.
104. Repeals the Indictable Offences (Preliminary Enquiry) Act and the Administration of Justice (Indictable Proceedings) Act, 2011.
105. Stipulates, that the Indictable Offences (Preliminary Enquiry) Act will continue to apply to preliminary enquiries where proceedings have begun in the Magistrates' Court before the coming into force of this Act and Section 39 shall continue to apply to any trial where the enquiry was conducted before the commencement of the Act.
106. Establishes that a reference to deposition or depositions in any written law is to be interpreted as a statement or statements filed on committal proceedings.

107. Establishes that any reference in any written law to a preliminary enquiry under the Indictable Offences (Preliminary Enquiry) Act where applicable is to be interpreted as a reference to committal proceedings under this Act.

#### **SCHEDULE 1**

108. Outlines Form A to be used to record a complaint as well, Form to record a complaint made without oath.

#### **SCHEDULE 2**

109. Provides the form to be used where an accused person is remanded by warrant.

#### **SCHEDULE 3**

110. Provides outlines the warrant of Commitment form.

#### **SCHEDULE 4**

111. Outlines the form to record recognizance.

#### **SCHEDULE 5**

112. Outlines the various written laws to which consequential amendments have been made.

### **Considerations**

- The Bill allows Justices of the Peace to have concurrent jurisdiction with Magistrates.
- The Bill provides that magistrates may issue search warrants authorising constables to search and seize any building or thing reasonably believed to be involved in the commission of an indictable offence.
- The Bill provides that items subject to legal privilege be exempt from the execution of search warrants.
- The Bill provides that a Magistrate may commit an accused for trial on consideration of the State's evidence alone, or on consideration of the State's evidence in conjunction with evidence of the accused.
- The Bill requires an accused who intends to rely on an alibi, to give notice of such after he has been served documents by the prosecutor.
- The Bill allows the Director of Public Prosecutions to apply to the High Court for a warrant of arrest and committal for trial of an accused where he/she had been discharged by the Magistrate.

- The Bill allows the Director of Public Prosecution to prefer and indictment in the absence of committal proceedings in certain instances.
- The Bill allows the Director of Public Prosecutions to indict a person committed for trial for the original offence as well as any other offence disclosed by the evidence.
- The Bill provides that a Judge of the High Court may grant bail to an accused at any time in accordance with the Bail Act.

## SIMILAR LEGISLATION IN OTHER JURISDICTIONS

Country	Legislation	Remarks
<b>United Kingdom</b>	Indictments Act 1915 <sup>20</sup>	An Act to amend the Law relating to Indictments in Criminal Cases, and matters incidental or similar thereto.
	Criminal Procedure Act 2009 <sup>21</sup>	Section 68 of the Criminal Procedure Act, 2009 provides that Schedule 2 to the Act (which relates to the use at the trial of written statements and depositions admitted in evidence in committal proceedings) shall have effect.  Also provides for procedure to be followed regarding trial on indictment.
<b>Antigua and Barbuda</b>	The Criminal Procedure (Committal for Sentence) Act Chap 118 <sup>22</sup>	Provides for the: <ol style="list-style-type: none"> <li>1. Procedure where accused confess guilt at preliminary enquiry.</li> <li>2. Transmission of record of proceedings.</li> <li>3. Indictment.</li> <li>4. Accused to be brought before Judge to be dealt with.</li> <li>5. Plea by accused committed for sentence.</li> <li>6. Withdrawal by accused of consent to his committal for sentence.</li> <li>7. Powers of Court and Judge when dealing with committals for sentence.</li> <li>8. Notice by person committed for trial of intention to plead guilty.</li> <li>9. Committal for sentence in respect of</li> </ol>
	The Magistrate's Code of	

<sup>20</sup> <http://www.legislation.gov.uk/ukpga/Geo5/5-6/90/data.pdf>

<sup>21</sup> [http://www.legislation.vic.gov.au/Domino/Web\\_Notes/LDMS/LTObject\\_Store/LTObjSt7.nsf/DDE300B846EED9C7CA257616000A3571/293AB323AF0E7BC5CA257AE100186021/\\$FILE/09-7a027bookmarked.pdf](http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/LTObject_Store/LTObjSt7.nsf/DDE300B846EED9C7CA257616000A3571/293AB323AF0E7BC5CA257AE100186021/$FILE/09-7a027bookmarked.pdf)

<sup>22</sup> <http://www.laws.gov.ag/acts/chapters/cap-118.pdf>

	Procedure Act, 2004 <sup>23</sup>	(Amendment)	indictable offences tried summarily.
			The Magistrate's Code of Procedure (Amendment) Act, 2004 repeals the Criminal Procedure (Committal for Sentence) Act which will have been rendered redundant by the amendments proposed in this Act
<b>Australia</b>	New South Wales Criminal Procedure Act, 1986 <sup>24</sup>		
	Victoria Criminal Procedure Act, 2009 <sup>25</sup>		The Victoria Criminal Procedure Act, 2009 provides for depositions to means the transcript of evidence given in a committal proceeding and any statements admitted in evidence in a committal proceeding in accordance with Chapter 4;
	Western Australia Criminal Procedure Act 2004 <sup>26</sup>		
<b>Bahamas</b>	Criminal Procedure Code, 2006 <sup>27</sup>		Provides for: <ul style="list-style-type: none"> <li>• general provisions relating to arrest, recognisances and sureties;</li> <li>• general provisions relating to criminal investigations and proceedings;</li> <li>• provisions relating to preliminary inquiries including the use of expert documentary evidence thereat and in other criminal proceedings;</li> <li>• procedure in trials before the supreme court;</li> <li>• miscellaneous provisions relating to persons tried before the supreme court;</li> </ul>

<sup>23</sup> [http://ctrc.sice.oas.org/investment/NatLeg/ANB/MAGISTRATES\\_CODE\\_ACT.pdf](http://ctrc.sice.oas.org/investment/NatLeg/ANB/MAGISTRATES_CODE_ACT.pdf)

<sup>24</sup> [http://www.austlii.edu.au/au/legis/nsw/consol\\_act/cpa1986188/](http://www.austlii.edu.au/au/legis/nsw/consol_act/cpa1986188/)

<sup>25</sup> [http://www.austlii.edu.au/cgi-bin/download.cgi/cgi-bin/download.cgi/download/au/legis/vic/consol\\_act/cpa2009188.pdf](http://www.austlii.edu.au/cgi-bin/download.cgi/cgi-bin/download.cgi/download/au/legis/vic/consol_act/cpa2009188.pdf)

<sup>26</sup> [http://www.austlii.edu.au/au/legis/wa/consol\\_act/cpa2004188/](http://www.austlii.edu.au/au/legis/wa/consol_act/cpa2004188/)

<sup>27</sup> [http://bahamas.bahamasinfosearch.com/PDF/Consolidated-Laws/1968/1968-0038/CriminalProcedureCodeAct\\_1.pdf](http://bahamas.bahamasinfosearch.com/PDF/Consolidated-Laws/1968/1968-0038/CriminalProcedureCodeAct_1.pdf)



- procedure for indictment of offenders.

<b>Barbados</b>	Magistrate Court Act, Chap 116A 1996 <sup>28</sup>	An Act to provide for certain procedural reforms in the jurisdiction of magistrates in civil and criminal proceedings and in the practice and procedure before magistrate's courts, to consolidate enactments relating to the magistrate's courts and to provide for associated matters.
<b>Canada</b>	Criminal Code Act 1985 <sup>29</sup>	
<b>Dominica</b>	Criminal Procedure Act Chap 12:01 <sup>30</sup>	Provides for Apprehension of Offenders, Procedure after preliminary inquiry and before indictment etc.
<b>Guyana</b>	Criminal Law Procedure Act Chap 10:01 <sup>31</sup>	An Act to consolidate and amend laws relating to procedure with respect to Indictable Offences.
<b>Jamaica</b>	The Committal Proceedings Act, 2013 <sup>32</sup>	An Act to Abolish preliminary examinations and to provide for the procedure relating to committal for trial in cases of indictable offences, to be known as committal proceedings, and for matters incidental thereto.
<b>New Zealand</b>	<b>Crimes Act 1961<sup>33</sup></b>	
	Crimes Amendment Act, (No. 4), 2011 <sup>34</sup>	Crimes Amendment Act, (No. 4), 2011 Repeals definition of deposition
	Criminal Procedure Act 2011 <sup>35</sup>	The purpose of the Criminal Procedure Act is to— (a) set out the procedure for the conduct of criminal proceedings; and (b) provide for the use of electronic technology in relation to criminal procedure and the court record of criminal proceedings.

Also provides for:

- Commencement of proceedings and preliminary steps;

<sup>28</sup> <http://barbadosparliament-laws.com/en/ShowPdf/116A.pdf>

<sup>29</sup> <http://laws-lois.justice.gc.ca/eng/acts/C-46/page-1.html>

<sup>30</sup> <http://www.dominica.gov.dm/laws/chapters/chap12-01.pdf>

<sup>31</sup> [http://www.oas.org/juridico/spanish/mesicic2\\_guy\\_criminal\\_proc\\_act.pdf](http://www.oas.org/juridico/spanish/mesicic2_guy_criminal_proc_act.pdf)

<sup>32</sup> [http://www.japarliament.gov.jm/attachments/341\\_24.pdf](http://www.japarliament.gov.jm/attachments/341_24.pdf)

<sup>33</sup> <http://www.legislation.govt.nz/act/public/1961/0043/latest/whole.html>

<sup>34</sup> <http://www.legislation.govt.nz/act/public/2011/0085/latest/DLM4057904.html>

<sup>35</sup> <http://www.legislation.govt.nz/act/public/2011/0081/latest/DLM3359962.html>

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- Procedure before trial;
  - Application for oral evidence order;
  - Procedure for taking oral evidence;
  - Adjournments and bail; and
  - use of Alibi. Etc.

**St Lucia** Criminal Code, 2004<sup>36</sup>

**St Kitts and Nevis** Criminal Justice Bill, 2001<sup>37</sup>

An Act to amend the Magistrate's Code of Procedure Act, Chapter 46 to expand the jurisdiction of Magistrates and related matters

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### **NEWSPAPER ARTICLES**

[http://www.newsday.co.tt/crime\\_and\\_court/print,0,194434.html](http://www.newsday.co.tt/crime_and_court/print,0,194434.html)

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**May 15<sup>th</sup>, 2014**

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<sup>36</sup> <http://www.rslpf.com/site/criminal%20code%202004.pdf>

<sup>37</sup> <http://www.stkittsnevis.net/pdf/criminaljustice.pdf>