



THE PARLIAMENT OF  
TRINIDAD AND TOBAGO

**BILL ESSENTIALS**

Date Introduced: 6 March, 2020

House: House of Representatives

Minister: Minister of National Security

HOR Bill No: 3 of 2020

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](http://www.ttparliament.org)

# BILL ESSENTIALS

BILL ESSENTIALS NO.33, 2019–2020





20 APRIL, 2020

## The Administration of Justice (Electronic Monitoring) (Amendment) Bill, 2020




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## BACKGROUND

1. The **Administration of Justice (Electronic Monitoring) (Amendment) Bill, 2020**<sup>1</sup> (“the Bill”) was introduced in the House of Representatives by the Minister of National Security on March 6, 2020. The Bill seeks to amend the **Administration of Justice (Electronic Monitoring) Act, 2012**<sup>2</sup> (“the Act”).
2. This Bill primarily seeks to:
  -  insert new definitions into the Act;
  -  provide for the delegation of specific powers;
  -  provide for an oath of secrecy; and
  -  provide for the provision of protection devices.
3. The Bill will come into force on such date as fixed by the President by Proclamation.

## KEY FEATURES OF THE BILL

4. **Clause 4** of the Bill proposes to amend section 3 of the Act by inserting new definitions. These include, *inter alia*:-
  -  “authorised officer” means the Director or a member of staff of the Unit<sup>3</sup> authorised by him under section 4A (a new section inserted by the Bill).
  -  “monitored persons” means a person, respondent, child or applicant who may be subjected to electronic monitoring pursuant to a court order, a lawful condition of pardon, instructions from a competent authority or an application by a person under section 13 of the Act.
  -  “protection device” means a small portable device which generates audible and visual indication signals received from the radio frequency tag physically attached to a monitored person.
5. **Clause 4** also repeals and replaces the definition of “electronic monitoring device” or “device” to include a device, which operates on a global positioning system (GPS), radio frequency or telecommunications network, which is used to monitor compliance with the conditions of release of a monitored person. This definition is more comprehensive than the previous.

<sup>1</sup>Administration of Justice (Electronic Monitoring) (Amendment) Bill, 2020: <http://www.ttparliament.org/legislations/b2020h03g.pdf>

<sup>2</sup>Administration of Justice (Electronic Monitoring) Act, 2012: <http://www.ttparliament.org/legislations/a2012-11.pdf>

<sup>3</sup> The Unit refers to the Electronic Monitoring Unit established by the Act which is tasked with implementing the system for electronic monitoring.

## PART II – THE ELECTRONIC MONITORING UNIT





6. **Clause 5** seeks to insert a new **section 4A** into the Act which allows for the written delegation of functions of the Director of the Electronic Monitoring Unit (“the Unit”) to an authorised officer. The authorised officer must be a member of staff of the Unit.
7. **Clause 6** inserts after section 6, a new **section 6A**, which empowers the Director to issue standard operating procedures for the proper functioning of the Unit.

### Confidentiality of Information

8. **Clause 7** repeals and replaces section 8 of the Act with a new **section 8**. This new **section 8** demands that every employee or consultant with the Unit, take an oath of secrecy to not disclose any information received from the Unit in the course of employment. A person who breaches this section commits an offence and is liable on summary conviction to a fine of **one hundred thousand dollars (\$100,000.00)** and imprisonment for **two (2) years**.

## PART III – ELECTRONIC MONITORING

### Electronic monitoring imposed by the Court

9. **Clause 8** amends section 10 of the Act. The amendment to section 10 (2) seeks to expand the grounds upon which the Court may impose a sentence of electronic monitoring. The additional grounds include:
  -  where a probation order is issued under the Probation of Offenders Act<sup>4</sup>;
  -  a community service order under the Community Service Orders Act<sup>5</sup>;
  -  or any other application which in its discretion it considers appropriate to impose electronic monitoring.
10. Further, a new **subsection 3(A)** is inserted after the existing subsection 3. The present subsection 3 places limitations on when the Court may impose electronic monitoring, including murder, kidnapping and drug trafficking. However, the new **subsection 3(A)** provides two exemptions to these limitations and prescribes that the Court may impose electronic monitoring:
  -  where bail is granted; and

<sup>4</sup>Probation of Offenders Act Chap.13: 51: [https://rgd.legalaffairs.gov.tt/laws2/Alphabetical\\_List/lawspdfs/13.51.pdf](https://rgd.legalaffairs.gov.tt/laws2/Alphabetical_List/lawspdfs/13.51.pdf)

<sup>5</sup>Community Service Orders Act Chap.13:06: [https://rgd.legalaffairs.gov.tt/laws2/Alphabetical\\_List/lawspdfs/13.06.pdf](https://rgd.legalaffairs.gov.tt/laws2/Alphabetical_List/lawspdfs/13.06.pdf)



in the case of a child.

11. **Clause 8** also amends subsection (5)(b)(ii) of section 10, by deleting the words “parent or guardian” and substituting the words “parent, guardian or person with responsibility for the child”. This is done throughout the Act where the words “parent or guardian” appear.
12. Additionally, in subsections (5) and (7), the words “the Court shall commit the person to custody,” is repealed and replaced with “the Court may commit the person to custody or may grant bail on such terms as it thinks fit,” thus expanding the Court’s discretion to include the power to grant bail in such circumstances.
13. Moreover, **Clause 8** proposes the insertion of a new **subsection 8(A)**. Presently, the Court, in deciding whether to impose electronic monitoring, can only request a report concerning a respondent from the Director of the Unit. This new **subsection 8(A)** empowers the Court to request a report from **any other person** it considers necessary to assist in determining whether to impose electronic monitoring.

### Protection Device

14. **Clause 9** seeks to insert a new **section 10A**. This new section provides for the issuance of a protection device to an applicant. A protection device is intended to provide audible and visual warning signals that a monitored person is nearby. An applicant who is issued a protection device accepts responsibility for its proper use and care.

### Electronic Monitoring as a Condition of Pardon

15. **Clause 10** of the Bill inserts a new **subsection 11 (2)** into the existing section 11 which prescribes that electronic monitoring may be imposed as a lawful condition of a pardon granted under the Constitution<sup>6</sup>. The new subsection provides that a report shall be requested from the Director concerning the person and whilst awaiting the report, the person shall be committed to custody.

### Terms of Electronic Monitoring

16. **Clause 14** of the Bill amends section 16 of the Act and inserts a new **subsection (1A)**. This new subsection provides for instances where a person may be negligent or cause damage to an

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<sup>6</sup> Constitution of the Republic of Trinidad and Tobago Chap 1:01, section 87 (2) (a):

<https://rgd.legalaffairs.gov.tt/laws2/Constitution.pdf>

electronic monitoring or protection device. A person who causes damage to a device is liable for its replacement cost and shall be brought before the Court or competent authority to determine whether they will be allowed to continue participating in electronic monitoring.

17. Further, subsection 3 of section 16 is repealed and replaced with a new **subsection 3**. This new subsection requires that copies of the decisions made under section 10 and section 13 of the Act be given to:



the person or respondent;



the child (his parent, guardian or person with responsibility for the child);



an applicant;



the Director of the Unit; and



any other party the Court in its discretion considers it necessary to inform.

This expands the previous list of persons who should be given copies of decisions.

## PART IV – OFFENCES

### Change of Circumstances

18. **Clause 16** of the Bill amends section 19 of the Act by inserting a new **subsection (2A)**. The amendment provides that where the Director of the Unit receives information of a change in circumstances for a respondent or child, he shall immediately notify the Court in writing.

### Regulations

19. **Clause 19** provides for amendment to section 25 of the Act. This amendment repeals paragraph (b)<sup>7</sup>, (c)<sup>8</sup> and (f)<sup>9</sup>, thus removing certain grounds for which the Minister may make Regulations.

20. **Clause 20** inserts a new **section 25A**. This section empowers the Rules Committee established under the Supreme Court of Judicature Act<sup>10</sup> to make Rules of Court generally for the purposes of this Act. Such Rules of Court shall be subject to the negative resolution of Parliament.

<sup>7</sup> (b) conditions that are to be included in a decision pursuant to section 16 (Terms of electronic monitoring).

<sup>8</sup> (c) circumstances constituting an emergency under section 20(2) (Power of the Court in respect of non-compliance with a decision or in respect of an offence).

<sup>9</sup> (f) any means test related to payment for the use of the electronic monitoring device.

<sup>10</sup> **Supreme Court of Judicature Act, section 77:** [https://rgd.legalaffairs.gov.tt/laws2/Alphabetical\\_List/lawspdfs/4.01.pdf](https://rgd.legalaffairs.gov.tt/laws2/Alphabetical_List/lawspdfs/4.01.pdf)

## Schedules

21. **Clause 25** provides for the insertion of new Schedule in the Act. This new **Schedule Four** specifies the form of the Oath of Secrecy as prescribed under the new **section 8** of the Act.

## REFERENCES

### KEY LEGISLATION



**Administration of Justice (Electronic Monitoring) (Amendment) Bill, 2020**

<http://www.ttparliament.org/legislations/b2020h03g.pdf>



**Administration of Justice (Electronic Monitoring) Act, 2012**

<http://www.ttparliament.org/legislations/a2012-11.pdf>

### OTHER LEGISLATION



**Constitution of the Republic of Trinidad and Tobago Chap. 1:01**

<https://rgd.legalaffairs.gov.tt/laws2/Constitution.pdf>



**Probation of Offenders Act Chap.13: 51**

[https://rgd.legalaffairs.gov.tt/laws2/Alphabetical\\_List/lawspdfs/13.51.pdf](https://rgd.legalaffairs.gov.tt/laws2/Alphabetical_List/lawspdfs/13.51.pdf)



**Community Service Orders Act Chap.13:06:**

[https://rgd.legalaffairs.gov.tt/laws2/Alphabetical\\_List/lawspdfs/13.06.pdf](https://rgd.legalaffairs.gov.tt/laws2/Alphabetical_List/lawspdfs/13.06.pdf)



**Supreme Court of Judicature Act, section 77:**

[https://rgd.legalaffairs.gov.tt/laws2/Alphabetical\\_List/lawspdfs/4.01.pdf](https://rgd.legalaffairs.gov.tt/laws2/Alphabetical_List/lawspdfs/4.01.pdf)



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April 20, 2020

*The Administration of Justice (Electronic Monitoring) (Amendment) Bill, 2020*

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