

**Third Session Fourth Parliament Republic of Trinidad
and Tobago**



REPUBLIC OF TRINIDAD AND TOBAGO

Act No. 20 of 1994

[L.S.]

AN ACT to amend the Indictable Offences (Preliminary
Enquiry) Act, Chap. 12:01

[Assented to 30th September, 1994]

WHEREAS it is enacted by section 13(1) of the ^{Preamble} Constitution that an Act of Parliament to which that section applies may expressly declare that it shall have effect even though inconsistent with sections 4 and 5 of the Constitution, and if any Act does so declare it shall have effect accordingly:

And whereas it is provided in subsection (2) of the said section 13, that an Act of Parliament to which that section applies is one the Bill for which has been passed by both Houses of Parliament and at the final vote thereon in each House has been supported by the votes of not less than three-fifths of all the Members of that House:

And whereas it is necessary and expedient that this Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution:

Enactment

ENACTED by the Parliament of Trinidad and Tobago as follows:—

Short title

1. (1) This Act may be cited as the Indictable Offences (Preliminary Enquiry) (Amendment) Act, 1994.

(2) This Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution.

Chap. 12:01
amended

2. The Indictable Offences (Preliminary Enquiry) Act (hereinafter referred to as "the Act") is amended by inserting immediately after section 24 the following new sections:

"DISCHARGE, COMMITTAL ON WRITTEN STATEMENT

Committal
for trial
upon written
statements

24A. (1) A magistrate holding a preliminary enquiry into an indictable offence may admit as evidence-in-chief written statements tendered to the Court in accordance with this section (hereinafter referred to as 'the written statements').

(2) A magistrate holding a preliminary enquiry into an indictable offence, may, if satisfied that the written statements, with or without exhibits,

contain all the evidence required by the Court, commit the accused for trial for the offence, without consideration of the contents of those statements.

(3). A magistrate referred to in subsection (2) shall not commit the accused for trial for the offence based solely on the evidence contained in the written statements if—

- (a) the accused or one of the accused is not represented by Counsel;
- (b) Counsel for the accused or one of the accused, as the case may be, has requested the Court to consider a submission that the statements disclose insufficient evidence to put the accused on trial by jury for the offence.

Discharge

(4) Where upon consideration of all the evidence contained in written statements tendered to him under subsection (3) and upon consideration of any submissions made on behalf of the accused a magistrate is of the opinion that the statements do not disclose sufficient evidence to commit the accused for trial for any offence, he may discharge him.

(5) Notwithstanding that a written statement made by any person may be admissible in committal proceedings under this section, the magistrate before whom the proceedings are conducted may, on his own motion and shall, on the application of any party to the proceedings, require that person to attend before the Court and give evidence.

(6) Notwithstanding the admission into evidence by a magistrate of a written statement made by a person in committal proceedings by virtue of this section, any party to the proceedings or attorney acting on behalf of that party is entitled as of right to cross-examine the maker of the statement in the same way as if the witness has given oral evidence-in-chief and the magistrate shall be required to consider the evidence given in cross-examination in addition to and in relation to the evidence given in the written statement to determine whether the prosecution has made out a *prima facie* case against the accused.

(7) In a preliminary enquiry a written statement by any person shall, if the conditions mentioned in subsection (8) are satisfied, be admissible under this section as evidence to the like extent as oral evidence to the like effect by that person.

(8) The conditions referred to in subsection (7) are that—

- (a) the statement purports to be signed by the person who made it;
- (b) the statement was sworn before a Clerk of the Peace and authenticated by him;
- (c) the statement contains a declaration by the person who made it to the effect that it is true to the best of his knowledge and belief that he made the statement knowing that, if it were tendered

in evidence, he would be liable to prosecution if he wilfully stated in it anything which he knew to be false or did not believe to be true;

- (d) before the statement is tendered in evidence a copy of the statement is given, by or on behalf of the party proposing to tender it, to each of the other parties to the enquiry; and
- (e) none of the other parties, before the statement is tendered in evidence at the committal proceedings, objects, on legal grounds, to the statement or any part thereof.

(9) The following provisions shall also have effect in relation to any written statement tendered in evidence under this section, that is to say—

- (a) where the statement is made by a minor, it shall state his age;
- (b) where the statement is made by a person who cannot read, it shall be read to him before he signs it and it shall be accompanied by a declaration by the Clerk of the Peace who so read the statement to the effect that it was so read;
- (c) where the statement refers to any other document as an exhibit, the copy of the statement given to any other party to the enquiry under subsection (8)(d) shall be

accompanied by a copy of that document or by such information as may be necessary in order to enable the party to whom it is given to inspect that document or a copy thereof; and

- (d) any document or object referred to as an exhibit and identified in a written statement shall be treated as if it had been produced as an exhibit and identified in court by the maker.

Chap. 4:20 (10) Neither section 55 of the Summary Courts Act nor Part VI of that Act shall apply to proceedings under this section.

Transitional provision

(11) Nothing in this section shall apply to proceedings which began before the commencement of the Indictable Offences (Preliminary Enquiry) (Amendment) Act, 1994.

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(12) Section 39(1) shall apply to any written statement tendered in evidence in proceedings under this section as it applies to a deposition taken in a preliminary enquiry, but in its application to any such statement, section 39(1) shall have effect as if paragraphs (b) and (c) thereof were omitted.

Order of commitment and bail

24B. The provisions of this Act relating to the commitment for trial and to bail of an accused person shall apply where a magistrate commits an accused person under section 24A.

Sections 21, 25 and 27 to apply

24C. Sections 21, 25 and 27 apply to proceedings under section 24A.

Further
evidence

24D. A Magistrate conducting a preliminary enquiry in accordance with section 16 or under section 24A may, if he thinks fit and although the case for the prosecution has been closed, take the evidence of further witnesses for the prosecution or recall any witness for further examination, or call upon the maker of a written statement to furnish him with additional evidence, as the case may be."

3. The Act is amended by inserting after section 27 The Act amended the following new sections:

"COMMITTAL FOR SENTENCE

Accused
admitting
guilt at
preliminary
enquiry to be
committed for
sentence

27A. In a preliminary enquiry except when the charge is one of treason or murder, if an accused person who is represented by an attorney informs the magistrate that he is guilty of the charge the magistrate may commit him for sentence before the High Court in accordance with section 27C(2).

Accused
admitting
guilt at
preliminary
enquiry to be
further
cautioned
and may be
committed
for sentence

27B. Except where the offence is one of treason or murder, if, after being informed of his rights under section 17, an accused person instead of giving evidence upon oath says or admits that he is guilty of the charge, then the magistrate shall further say to him the words following, or words to the like effect:

[172/1961
8/1962
136/1976]

"Do you wish the witnesses again to appear to give evidence against you at your trial? If you do not, you will now be committed for sentence, instead of being committed for trial."

Answer of
accused
consenting to
be committed
for sentence
to be
recorded

27C. (1) Where the accused, in answer to the question referred to in section 27A states that he does not wish the witnesses again to appear to give evidence against him, his statement shall be taken down in writing and read to him and shall be signed by the magistrate and by the accused, if he will, and shall be kept with the depositions of the witnesses. The witnesses may thereupon be bound over conditionally in the manner provided by section 21(5).

Committal
for sentence

(2) In any such case as mentioned in this section the magistrate shall, instead of committing the accused for trial, order him to be committed for sentence before the High Court, and in the meantime, the magistrate shall, by his warrant, commit the accused to prison to be there safely kept until the sittings of that Court, or until he is admitted to bail or delivered by due course of law.

Admissibility
of statement
of accused in
evidence

(3) The statement of the accused made under this section shall be received in evidence upon its mere production without further proof by the Court before which he is brought for sentence.

Transmission
of proceedings
and filing of
indictment

(4) The magistrate shall, as soon after the committal as is practicable, transmit to the Director of Public Prosecutions the record or the proceedings in the manner required by section 24 and the Director of Public Prosecutions shall prefer and file in the High Court an indictment against the accused person committed for sentence.”

4. Section 33 of the Sexual Offences Act, 1986 is hereby repealed. Consequential repeal
Act No. 27 of 1986

Passed in the House of Representatives this 2nd day of September, 1994.

R. CUMBERBATCH

Acting Clerk of the House

IT IS HEREBY CERTIFIED that this Act is one the Bill for which has been passed by the House of Representatives and at the final vote thereon in the House has been supported by the votes of not less than three-fifths of all the members of the House that is to say by the votes of 33 members of the House.

R. CUMBERBATCH

Acting Clerk of the House

Passed in the Senate this 6th day of September, 1994.

J. SAMPSON

Acting Clerk of the Senate

IT IS HEREBY CERTIFIED that this Act is one the Bill for which has been passed by the Senate and at the final vote thereon in the Senate has been supported by the votes of not less than three-fifths of all the members of the Senate that is to say by the votes of 25 Senators.

J. SAMPSON

Acting Clerk of the Senate