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SENATE

**BILL**

AN ACT to amend the Interception of  
Communications Act, Chap. 15:08

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THE INTERCEPTION OF COMMUNICATIONS  
(AMENDMENT) BILL, 2020

**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 Interception of Communications Act, Chap. 15:08 (“the Act”) to allow for the interception of communications from prisons and vehicles used to transport prisoners and communications to be recorded in a prison or a vehicle used to transport prisoners. The Bill seeks to provide for officers to apply for a warrant to obtain stored communication from a telecommunications service provider and to also obtain stored data and to disclose the stored communication and the stored data as specified under a warrant issued under section 8 of Act. The Bill also seeks to make further provision in relation to sensitive information and establishes the procedure for the disclosure of sensitive information, and amends the provisions related to the information that has been intercepted to allow for the information to be admissible as evidence in specified proceedings.

Clause 1 of the Bill provides for the citation of the Act for which this is the Bill.

Clause 2 of the Bill provides for the Act to have effect although it would be inconsistent with sections 4 and 5 of the Constitution and is therefore required to be passed by a special majority of three-fifths of the members of each House.

Clause 3 of the Bill provides for the interpretation of the term “the Act”, which is used throughout the Bill, to mean the Interception of Communications Act, Chap. 15:08.

Clause 4 of the Bill provides for the application of the Bill to specified proceedings except trials which have commenced and are in progress.

Clause 5 of the Bill amends section 5 of the Act to provide for the interpretation of certain terms used in the proposed Act, such as, “address”, “device”, “electronic location”, “prison”, “rehabilitation centre”, “stored communications”, “stored data”, and “telecommunications service provider”. The definitions of “communications data” and “traffic data” have been moved from section 18 and inserted, for ease of reference, in section 5 of the Act.

Clause 6 of the Bill seeks to amend section 6 of the Act in subsection (1) by increasing the severity of the penalty of interception of communication by making a person liable on conviction on indictment to a fine of one million dollars and to imprisonment for fifteen years. It also amends section 6(2)(f) of the Act to exempt from the application of the Act circumstances where the communication is a stored communication or communications data and is acquired in accordance with this Act or any other law. It also inserts a new paragraph (h) to allow interception of communication transmitted to or from a device in a prison or a vehicle used to transport prisoners in certain circumstances. It also inserts a new subsection (6) to widen the ambit of the type of information that is to be exempt to include sensitive information and any other information not specified in section 24.

Clause 7 of the Bill seeks to insert new sections 6A (Interception of communications from a prison and a vehicle used to transport prisoners) and 6B (Communications recorded in a prison or a vehicle used to transport prisoners) which would allow for these types of communications in a prison and vehicle used to transport prisoners to now be intercepted and recorded.

Clause 8 of the Bill seeks to amend section 7 to include intercepted devices that are also imported.

Clause 9 of the Bill seeks to amend section 8(1) of the Act by inserting two new paragraphs (b) and (c) which authorise the person named in the warrant to obtain stored communication from a telecommunications service provider and to disclose the stored communication to such persons and in such manner as may be specified in the warrant and it also authorises the person named in the warrant to obtain stored data and to disclose the stored data to such persons and in such manner as may be specified in the warrant. It also seeks to amend section 8(2)(a) of the Act by inserting a new subparagraph (iii) to provide for a warrant being issued where the judge is satisfied that it is necessary for the purpose of rendering assistance under the Mutual Assistance in Criminal Matters Act, Chap. 11:24 or giving effect to the provisions of an international mutual assistance agreement. It also amends subsection (6) by increasing the severity of the penalty of disclosure by making a person liable on conviction on indictment to a fine of one million dollars and to imprisonment for fifteen years.

Clause 10 of the Bill seeks to amend section 9 of the Act by repealing subsection (1) which provides the definition of “address” which has been amended and moved from section 9 and inserted,

for ease of reference, in section 5 of the Act. It also seeks to amend subsection (4) to allow the appropriate persons or entities to furnish the required information, facilities or technical assistance at their own cost.

Clause 11 of the Bill seeks to amend section 11 (1) to clarify that urgent circumstances are to be linked to purposes of preventing or detecting the commission of an offence. It also seeks to amend section 11(1) by deleting paragraph (b) and substituting a new paragraph (b) thereby allowing a judge to issue a warrant authorising the person named in the warrant (i) to intercept, in the course of their transmission by means of a public or private telecommunications network, such communications as are described in the warrant and to disclose the intercepted communication to such persons and in such manner as may be specified in the warrant; (ii) to obtain stored communication from a telecommunications service provider and to disclose the stored communication to such persons and in such manner as may be specified in the warrant; or (iii) to obtain stored data and to disclose the stored data to such persons and in such manner as may be specified in the warrant.

Clause 12 of the Bill seeks to amend section 13 by deleting the words “interception warrants granted” and inserting the words “interceptions authorised” thereby expanding the scope and allowing for interceptions authorised under this Act. It also amends section 13 by inserting a new subsection (4) which allows a person or entity which is required to provide technical assistance to bear the cost of providing that assistance.

Clause 13 of the Bill seeks to amend section 15 by inserting after the words “virtue of a warrant”, the words “issued under this Act or any other written law” thereby broadening the scope of this section and inserting the word “authorised” wherever the word “officer” appears for clarity.

Clause 14 of the Bill would amend section 16 of the Act in order to require a person to whom a disclosure order is addressed to retain the key securely and issue a certificate stating that he used a key in his possession to obtain access to the protected communication.

Clause 15 of the Bill seeks to amend section 17 of the Act by repealing subsection (1) and substituting a new subsection (1) to expand the meaning of “sensitive information” to include the following: (a) an application for a warrant pursuant to section 8

or 11 or any related application or statutory declaration, notice, any other related document or Court order or other document made or issued under this Act; (b) an application for a warrant for the purpose of obtaining communication data or stored communication or any related application or statutory declaration or Court order or other document made or issued under this Act; (c) information relating to the method of interception or the obtaining of communications data or stored communication; or (d) any other information that suggests or tends to suggest—(i) any of the details pertaining to the method by which the communication was intercepted or the communications data or stored communication was obtained; or (ii) the identity of any party carrying out or assisting in the interception or the obtaining of the communications data.

The clause would also insert new subsections (2A) and (2B) to allow the contents of a communication that is obtained by interception permitted by section 6(2)(c), (d), (e), (f) or (g), section 6(2)(b) or section 6(2)(h) or pursuant to section 6B to be admissible as evidence, in any proceedings where the Judge is satisfied that it would be in the interests of justice to so admit it. A new subsection (2C) has also been inserted to allow a Judge to consider all the circumstances concerning the obtaining of the communication including, communication data and stored communication obtained under section 8, and whether the defendant was induced to say what he did and other relevant factors which would render what he said unreliable and he shall consider, in respect of the recorded communications, that—(a) nothing was done to induce or trick the accused or defendant into saying something; (b) the integrity of any recording is sound; (c) the use of the recording device was proportionate to the gravity of the alleged or suspected offence; (d) the use of the method was appropriately authorised by an officer independent of the investigation; and (e) no recording of any conversation subject to legal professional privilege which occurred in a place specified by the Minister under section 6B(2).

The clause would also repeal subsections (4) and (5) and substitute a new subsection (4) which seeks to provide for the procedure for disclosure of, and admissibility of evidence in relation to, sensitive information in any proceedings.

Clause 16 of the Bill seeks to insert in the Act a new section 17A (Disclosure of sensitive information in closed proceedings and Special Advocates) to allow the Court, where it considers it appropriate to determine the disclosure of sensitive information, to issue a special measure direction that closed proceedings be utilised.

Clause 17 of the Bill would repeal section 18(1) of the Act which provides for the definitions of “communications data” and “traffic data”, and such definitions would now be inserted in section 5 of the Act, which provides for the interpretation of certain terms used in the Act. The clause also seeks to insert the words “telecommunications service provider” throughout this section in tandem with the new definition of telecommunications service provider that has been introduced in section 5 of the Act.

Clause 18 of the Bill seeks to amend section 19 of the Act to allow stored communication or stored data obtained in accordance with section 18 to be admissible as evidence in accordance with the law relating to the admissibility of evidence. This clause would also repeal subsections (2) and (3) and substitute a new subsection (2) to provide for the procedure for admitting into evidence any communications data, stored communication or stored data before the Court.

Clause 19 of the Bill seeks to amend section 20 of the Act in subsections (1) and (2), by extending the circumstances under which any record of information obtained in pursuance of section 8 or 11 to now also include “pursuant to an order under section 15 or a notice under section 18” that is not related to the objective of the interception is destroyed immediately. This clause also seeks to insert new subsections (8) and (9), which would provide for a definition of “a record of information” and allows for information which may reveal the commission of other offences by other people or which may jeopardise other enquiries shall not be disclosed to the accused but shall be retained and be the subject of a public interest immunity application to the Court by the prosecution.

Clause 20 of the Bill seeks to amend section 21 by widening the ambit of protection offered to now include that of an officer authorised under section 5(2). This clause would ensure that in addition to an authorised officer, an officer authorised under section 5(2) would also not be liable for any act done by them in good faith pursuant to the Act.

Clause 21 of the Bill seeks to amend section 23 by deleting the word “criminal” so that it could apply to any proceedings, not only criminal proceedings.

Clause 22 of the Bill inserts a new section 23A (Tipping off), which seeks to make it an offence to disclose information or any other matter which is likely to prejudice any investigation which may be connected or related to an interception.

Clause 23 of the Bill seeks to amend section 25 to allow Regulations to provide that the contravention of any regulation constitutes an offence and may prescribe penalties for any offence not exceeding a fine of two hundred and fifty thousand dollars and imprisonment for two years.

Clause 24 of the Bill seeks to insert a new section 25A to allow the Rules Committee of the Supreme Court established by the Supreme Court of Judicature Act, Chap. 4:01 to make Rules to govern proceedings under the Act. These rules are subject to the negative resolution of Parliament.

Clause 25 of the Bill amends Schedule 1 to the Act by widening the scope of the “Description of Communication” as set out in the Application for a Warrant form to include both “intercepted communication/stored communication/stored data” as opposed to only “intercepted communication.”

Clause 26 of the Bill amends Schedule 2 to the Act by widening the scope of the “communications” referred to in the Statutory Declaration in Support of an Application for a Warrant to include “communications/stored communication/stored data” as opposed to only “communications.”

THE INTERCEPTION OF COMMUNICATIONS  
(AMENDMENT) BILL, 2020

**Arrangement of Clauses**

*Clause*

1. Short title
2. Act inconsistent with the Constitution
3. Interpretation
4. Application
5. Section 5 amended
6. Section 6 amended
7. Sections 6A and 6B inserted
8. Section 7 amended
9. Section 8 amended
10. Section 9 amended
11. Section 11 amended
12. Section 13 amended
13. Section 15 amended
14. Section 16 amended
15. Section 17 amended
16. Section 17A inserted
17. Section 18 amended
18. Section 19 amended
19. Section 20 amended
20. Section 21 amended
21. Section 23 amended
22. Section 23A inserted
23. Section 25 amended
24. Section 25A inserted
25. Schedule 1 amended
26. Schedule 2 amended



# **BILL**

AN ACT to amend the Interception of  
Communications Act, Chap. 15:08

[ , 2020]

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 section 13(2) of the Constitution 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 the provisions of 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	<b>1.</b> This Act may be cited as the Interception of Communications (Amendment) Act, 2020.
Act inconsistent with the Constitution	<b>2.</b> This Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution.
Interpretation Chap. 15:08	<b>3.</b> In this Act, “the Act” means the Interception of Communications Act.
Application  Chap. 11:27  Chap. 12:04  Chap. 12:07  Act 8 of 2019	<p><b>4.</b> (1) This Act applies to—</p> <ul style="list-style-type: none"> <li>(a) criminal proceedings;</li> <li>(b) proceedings under the Proceeds of Crime Act;</li> <li>(c) proceedings under the Extradition (Commonwealth and Foreign Territories) Act;</li> <li>(d) proceedings under the Anti-Terrorism Act; and</li> <li>(e) proceedings under the Civil Asset Recovery and Management and Unexplained Wealth Act,</li> </ul> <p>unless the trial has commenced and is in progress on the coming into force of this Act.</p>

(2) For the avoidance of doubt, a trial is deemed to have commenced after the evidence has begun to have been led.

5. Section 5 of the Act is amended by inserting in the appropriate alphabetical sequence, the following definitions: Section 5 amended

“address” includes a telephone number, an electronic location or a physical location;

“communications data” means any—

(a) traffic data comprised in or attached to a communication, whether by the sender or otherwise, for the purpose of any telecommunications network by means of which the communication is being or may be transmitted; or

(b) information, that does not include the contents of a communication, other than any data falling within paragraph (a), which is about the use made by any person—

(i) of any telecommunications network; or

(ii) of any part of a telecommunications network in connection with the provision to or use by, any person of any telecommunications service;

“device” means any electronic programmable apparatus used, whether by itself or as part of a computer network, an electronic communications network or any other

apparatus or equipment, or any part thereof, to perform pre-determined arithmetic, logical, routing or storage operations and includes—

- (a) an input device;
- (b) an output device;
- (c) a processing device;
- (d) a computer data storage medium;
- (e) a program; or
- (f) equipment,

that is related to, connected with or used with such a device or any part thereof;

“electronic location” includes any e-mail address, Internet Protocol address, website, or any other number or any designation used for the purpose of identifying any telecommunications network, device, custodian account or other electronic storage site;

“prison” includes—

- (a) the Port of Spain Prison;
- (b) the Golden Grove Prison;
- (c) the Maximum Security Prison, Golden Grove;
- (d) the Remand Prison, Golden Grove;
- (e) the Women’s Prison, Golden Grove;
- (f) the Eastern Correctional Rehabilitation Centre;
- (g) the Carrera Convict Prison;
- (h) the Tobago Convict Prison;

- (i) the Immigration Detention Centre;
- (j) a Rehabilitation Centre;
- (k) a holding cell at a police station or at a place of detention;
- (l) any other convict depot appointed, by Order, to be such by the Minister under section 4 of the Prisons Act; Chap. 13:01
- (m) any other place which the Minister may appoint as a prison, by Order, under sections 4, 5 and 6 of the Prisons Act; and
- (n) a place appointed by the President for the detention of a person under section 7 of the Constitution;

“rehabilitation centre” has the meaning assigned to it in section 2 of the Children’s Community Residences, Foster Care and Nurseries Act; Chap. 46:04

“stored communication” means any communication or communications data which has been transmitted by a telecommunications network and is stored on any facility capable of retaining such communication or communications data;

“stored data” means any data of whatever description stored on a device;

“telecommunications service provider” means a person or entity who provides telecommunications service by means of a public or private telecommunications network and all other providers of telecommunications services;

“traffic data”, in relation to a communication, means any data—

- (a) identifying, or purporting to identify, any person, apparatus or location to or from which the communication is or may be transmitted;
- (b) identifying or selecting, or purporting to identify or select, apparatus through or by means of which the communication is or may be transmitted;
- (c) comprising signals for the actuation of—
  - (i) apparatus used for the purpose of a telecommunications network for effecting, in whole or in part, the transmission of any communication; or
  - (ii) any telecommunications network in which that apparatus is comprised;
- (d) identifying the data or other data as comprised in or attached to a particular communication; or
- (e) identifying a computer file or computer programme, access to which is obtained or which is run by means of the communication, to the extent only that the file or programme is identified by reference to the apparatus in which it is stored, and references to traffic data being attached to a

communication include references to the data and the communication being logically associated with each other;”.

**6. Section 6 of the Act is amended—**

Section 6  
amended

(a) by repealing subsection (1) and substituting the following subsection:

“(1) Except as provided in this section, a person who intentionally intercepts a communication in the course of its transmission by means of a telecommunications network commits an offence and is liable on—

(a) summary conviction, to a fine of five hundred thousand dollars and to imprisonment for seven years; or

(b) conviction on indictment, to a fine of one million dollars and to imprisonment for fifteen years.”;

(b) in subsection (2)—

(i) by deleting paragraph (b)(ii) and substituting the following paragraph:

“(ii) for the prevention or detection of an offence—

(A) under this Act; or

(B) for which the penalty on conviction is imprisonment for ten years or more, and includes an

offence where death, imprisonment for the remainder of a person's natural life or life imprisonment is the penalty fixed by law;";

(ii) in paragraph (b), by deleting the words "but shall not be admissible as evidence in any criminal proceedings" and substituting the words "and may subject to section 17(2B) and (2C), be admissible as evidence in any proceedings";

(iii) by deleting paragraph (f) and inserting the following paragraph:

"(f) the communication is a stored communication or communications data and is acquired in accordance with this Act or any other law;";

(iv) in paragraph (g), by deleting the full stop and substituting the words "; or"; and

(v) by inserting after paragraph (g), the following paragraph:

"(h) the interception is of a communication transmitted to or from a device in a prison or a vehicle used to transport prisoners, and the interception is conducted by an authorised officer.";



- (c) in subsection (3), by deleting the words “The Court by which a person is convicted of an offence under this section” and substituting the words “Where a person is convicted of an offence under this section, the Court”; and
- (d) by inserting after subsection (5), the following subsection:

“(6) Exempt information under subsection (5) includes sensitive information and any other information not specified in section 24.”.

7. The Act is amended by inserting after section 6, the following sections: Sections 6A and 6B inserted

“Interception of communications from a prison and a vehicle used to transport prisoners”

6A. (1) The Commissioner of Prisons shall cause all prisoners and members of staff of a prison to be informed that any communication transmitted to or from any device, which is in a prison or a vehicle used to transport prisoners may be intercepted under section 6(2)(h).

(2) Notwithstanding any law to the contrary, communications referred to in subsection (1) are not subject to legal professional privilege, unless the communications take place—

- (a) on a designated device; or
- (b) in such places within a prison as may be specified by the Minister, by Order.

Communications recorded in a prison or a vehicle used to transport prisoners

6B. (1) Communications within a prison or a vehicle used to transport prisoners may be recorded by an authorised officer.

(2) Subsection (1) does not apply to such places within a prison as may be specified by the Minister, by Order.

(3) The Commissioner of Prisons shall cause all prisoners and members of staff of a prison to be informed that communications within the prison and vehicles used to transport prisoners may be recorded.

(4) Notwithstanding any law to the contrary, communications referred to in subsection (1) are not subject to legal professional privilege, unless the communications occur within such places within a prison as may be specified by the Minister under subsection (2).”.

Section 7 amended

**8.** Section 7 is amended—

- (a) in subsection (1), by inserting after the words “purchases,” the word “import”; and
- (b) in subsection (3), by inserting after the word “purchase”, the words “, import”.

Section 8 amended

**9.** Section 8 is amended—

- (a) by deleting subsection (1) and substituting the following subsection:

“(1) Subject to this section, an authorised officer may apply, *ex parte*, to a Judge for a warrant—

- (a) authorising the person named in the warrant—
  - (i) to intercept, in the course of their transmission by means of a public

or private telecommunications network, such communications as are described in the warrant; and

(ii) to disclose the intercepted communication to such persons and in such manner as may be specified in the warrant;

(b) authorising the person named in the warrant to obtain stored communication from a telecommunications service provider and to disclose the stored communication to such persons and in such manner as may be specified in the warrant; or

(c) authorising the person named in the warrant to obtain stored data and to disclose the stored data to such persons and in such manner as may be specified in the warrant.”;

(b) in subsection (2)(a)—

(i) in subparagraph (i), by deleting the word “or”;

- (ii) in subparagraph (ii), by inserting the word “or” after the words “committed;”; and
- (iii) by inserting after subparagraph (ii), the following subparagraph:

“(iii) for the purpose of rendering assistance under the Mutual Assistance in Criminal Matters Act or giving effect to the provisions of any international mutual assistance agreement;”; and

- (c) by deleting subsection (6) and substituting the following subsection:

“(6) A person who discloses the existence of a warrant or an application for a warrant, other than to a person to whom such disclosure is authorised for the purpose of this Act, commits an offence and is liable on—

- (a) summary conviction, to a fine of fifty thousand dollars and to imprisonment for three years; or
- (b) conviction on indictment, to a fine of one million dollars and to imprisonment for fifteen years.”.

Chap. 11:24

Section 9 amended

**10. Section 9 of the Act is amended—**

- (a) by repealing subsection (1); and

(b) in subsection (4)—

- (i) by inserting after the word “furnish”, the words “, at their own cost, such”; and
- (ii) by inserting after the words “technical assistance”, the words “as may be”.

11. Section 11 of the Act is amended in sub-Section 11 amended  
section (1)—

- (a) by inserting after the word “requires”, the words “, for the purposes of preventing or detecting the commission of an offence”;
- (b) in paragraph (a), by inserting after the word “warrant” the words “under this section”; and
- (c) by deleting paragraph (b) and substituting the following paragraph:

“(b) if satisfied of the matters referred to in section 8(2), he shall issue a warrant authorising the person named in the warrant—

- (i) to intercept, in the course of their transmission by means of a public or private telecommunications network, such communications as are described in the warrant and to disclose the intercepted communication to such persons and in such manner as may be specified in the warrant; and

- (ii) to obtain stored communication from a telecommunications service provider and to disclose the stored communication to such persons and in such manner as may be specified in the warrant; or
- (iii) to obtain stored data and to disclose the stored data to such persons and in such manner as may be specified in the warrant.”.

Section 13 amended **12.** Section 13 of the Act is amended—

- (a) in subsection (1), by deleting the words “interception warrants granted” and substituting the word “interceptions authorised”; and
- (b) by inserting after subsection (3), the following subsection:

“(4) A person or entity which is required to provide assistance under subsection (1) or (2), shall bear the cost of providing that assistance.”.

Section 15 amended **13.** Section 15 of the Act is amended in subsection (1)—

- (a) by inserting after the words “virtue of a warrant”, the words “issued under this Act or any other written law”;
- (b) by inserting the word “authorised” after the words “and the”; and

(c) by inserting the word “authorised” before the words “officer may”.

**14.** Section 16 of the Act is amended in subsection (1)— Section 16 amended

(a) in paragraph (a), by deleting the word “and”;

(b) in paragraph (b), by deleting the full-stop and substituting the words “; and”; and

(c) by inserting after paragraph (b), the following paragraph:

“(c) shall securely retain the key and issue a certificate stating that he used a key in his possession to obtain access to the protected communication.”.

**15.** Section 17 of the Act is amended—

Section 17 amended

(a) by repealing subsection (1) and substituting the following subsection:

“(1) In this section and in section 19, “sensitive information” means—

(a) an application for a warrant pursuant to section 8 or 11 or any related application or statutory declaration, notice, any other related document or Court order or other document made or issued under this Act;

(b) an application for a warrant for the purpose of obtaining communication data or stored

communication or any related application or statutory declaration or Court order or other document made or issued under this Act;

(c) information relating to the method of interception or the obtaining of communications data or stored communication; or

(d) any other information that suggests or tends to suggest—

(i) any of the details pertaining to the method by which the communication was intercepted or the communications data or stored communication was obtained; or

(ii) the identity of any party carrying out or assisting in the interception or the obtaining of the communications data.”;

(b) in subsection (2), by inserting the word “a” before the word “warrant” and deleting the word “criminal”;



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

“(2A) The contents of a communication obtained by interception under section 6(2)(c), (d), (e), (f) or (g) shall be admissible as evidence in any proceedings.

(2B) The contents of a communication that is obtained—

(a) by interception permitted by section 6(2)(b) or section 6(2)(h); or

(b) pursuant to section 6B, shall be admissible in evidence in any proceedings where the Judge is satisfied that it would be in the interests of justice to so admit it.

(2C) In making a decision under subsections (2A) and (2B), the Judge shall consider all the circumstances concerning the obtaining of the communication, including communication data and stored communication obtained under section 8, whether the defendant was induced to say what he did and any other relevant factors which would render what he said unreliable and he shall consider, in respect of the communications, that—

(a) nothing was done to induce or trick the accused or defendant into saying something;

- (b) the integrity of any recording is sound;
  - (c) the use of the recording device was proportionate to the gravity of the alleged or suspected offence;
  - (d) the use of the method was appropriately authorised by an officer independent of the investigation; and
  - (e) no recording of any conversation subject to legal professional privilege which occurred in a place specified by the Minister under section 6B (2).”;
- (d) in subsection (3), by deleting the word “criminal”; and
- (e) by repealing subsections (4) and (5) and substituting the following subsection:
- “(4) In any proceedings—
- (a) no evidence shall be adduced and no question shall be asked of any witness that suggests or tends to suggest the disclosure of sensitive information, except with the express leave of the Court hearing the proceedings;
  - (b) the Court shall not grant leave in relation

to any evidence or question referred to in paragraph (a), unless it is satisfied by the party challenging the evidence that it would be relevant to—

- (i) the validity and lawfulness of the warrant;
- (ii) the accuracy and integrity of the intercepted communication; or
- (iii) the accuracy and integrity of the communication data,

and that a refusal may render unsafe a conclusion of the jury or the Court, as the case may be, on any relevant issue in the case;

- (c) a statement by a witness that the interception of the communication which is to be produced in evidence before the Court was permitted by any of the provisions of section 6(2)(a) or (h) shall be sufficient evidence that it was so permitted, unless the

Court has given leave for the disclosure of sensitive information and documents concerning the granting of the warrant or other authorisation or lawful justification of the interception;

(d) a statement by a witness that the intercepted communication, which is to be produced in evidence before the Court, was obtained pursuant to a warrant permitting the interception of communications between or from such addresses as specified in the statement shall be sufficient evidence of the source and origin of the communication, unless the Court has given leave for sensitive information to be led in evidence as to how, when or by whom the interception was accomplished; and

(e) a statement by a witness that any document containing or concerning an intercepted communication—

(i) is, or forms part of, a record of a trade or

business shall be sufficient evidence that the document is admissible in accordance with section 14 of the Evidence Act; or

- (ii) was produced by a computer shall, subject to section 14B of the Evidence Act be admissible as evidence,

unless the Court has given leave for sensitive information and documents concerning the granting of the warrant or other authorisation or lawful justification of the interception to be led in evidence as to how, when or by whom the interception was accomplished.”.

**16.** The Act is amended by inserting after section 17, Section 17A inserted the following section:

“Disclosure of sensitive information in closed proceedings, and Special Advocates 17A. (1) Where the Court considers it appropriate to determine whether sensitive information should be disclosed, the Court shall issue a special measure direction that closed proceedings be utilised.

(2) Where a special measure direction is issued by the Court, no person other than the Judge or the prosecution acting in the proceedings, the Court Interpreter or any other person who may be required to assist the Court in the conduct of its proceedings and the Special Advocate, representing the interests of the accused or the defendant, as the case may be, shall be present in the courtroom during the closed proceedings.

(3) A person involved in closed proceedings under subsection (1), shall be approved by the Court.

(4) In this section, “Special Advocate” means an attorney-at-law—

- (a) appointed by the Court to represent the interests of the accused or the defendant, as the case may be, in closed proceedings;
- (b) who acts in the interest of justice; and
- (c) whose function is to represent the interests of the accused or the defendant, as the case may be, by making submissions to the court, adducing evidence and cross-examining witnesses, making applications to the court, seeking directions from the court, and generally assisting the court.”.

Section 18 amended **17.** Section 18 of the Act is amended—

- (a) by repealing subsection (1);

- (b) in subsection (2)—
- (i) by deleting the words “person providing a telecommunications service” and substituting the words “telecommunications service provider”;
  - (ii) in the chapeau, by inserting the words “telecommunications service” before the word “provider”; and
  - (iii) in paragraph (b), by inserting the words “telecommunications service” before the word “provider”;
- (c) in subsection (6), by deleting the words “provider of a telecommunications service” and substituting the words “telecommunications service provider”; and
- (d) in subsection (7), by inserting the word “telecommunications” before the words “service provider”, wherever it occurs.

**18.** Section 19 of the Act is amended—

- (a) in the marginal note, by inserting after the word “data”, the words “stored communication and stored data”;<sup>Section 19 amended</sup>
- (b) in subsection (1)—
- (i) by inserting after the word “data”, the words “or stored communication”; and
  - (ii) by inserting after the words “section 18”, the words “, or stored data”; and
- (c) by repealing subsections (2) and (3) and substituting the following subsection:
- “(2) In admitting into evidence any communications data, stored

communication or stored data referred to in subsection (1)—

- (a) no evidence shall be adduced and no question shall be asked of any witness that suggests or tends to suggest the disclosure of sensitive information except with the leave of the Court hearing the proceedings;
- (b) the Court shall not grant leave in relation to such evidence or question, unless it is satisfied that it would be relevant to an issue in the case and that a refusal might render unsafe a conclusion of the jury or, as the case may be, the Court on any relevant issue in the case;
- (c) a statement by a witness that the data, which is to be produced in evidence before the Court, was obtained by an authorised officer pursuant to an order under section 15 or a notice under section 18 shall be sufficient evidence of the source and origin of the data



unless the Court has given leave for the sensitive information and documents concerning the granting of the warrant, to be led in evidence as to how, when or by whom the data was obtained; and

(d) a statement by a witness that any document containing or concerning communication data, traffic data or a stored communication—

(i) is, or forms part of, a record of a trade or business shall be sufficient evidence that the document is admissible in accordance with section 14 of the Evidence Act; or

(ii) was produced by a computer shall, subject to section 14B of the Evidence Act, be admissible as evidence,

unless the Court has given leave for sensitive information and documents concerning the granting

of the warrant or order to be led into evidence as to how, when or by whom the data was obtained.”.

Section 20 amended

**19.** Section 20 of the Act is amended—

(a) in subsection (1)—

(i) by deleting the word “An” and inserting before the words “authorised”, the words “Subject to subsection (9), an”; and

(ii) by inserting after the words “section 8 or 11”, the words “or pursuant to an order under section 15 or a notice under section 18”;

(b) in subsection (2), by inserting after the words “section 8 or 11”, the words “or pursuant to an order under section 15 or a notice under section 18”;

(c) in subsection (5), by deleting the word “An” and inserting before the words “authorised”, the words “Subject to subsection (9), an”; and

(d) by inserting after subsection (7), the following subsections:

“(8) For the purpose of this section, a record of information shall be related to the objective of the interception of communication if it includes, not only material concerning an offence but also information which assists in—

(a) identifying the sender or recipient of the communication or the

apparatus being used by the sender or recipient;

(b) placing the communication in context or otherwise assists in explaining it; and

(c) proving a link between the sender and the recipient and between either of them with a third party.

(9) Information which may reveal the commission of other offences by other people or which may jeopardise other enquiries shall not be disclosed to the accused but shall be retained and be the subject of a public interest immunity application to the Court by the prosecution.”.

**20.** Section 21 of the Act is amended by inserting after the word “officer”, the words “or an officer authorised under section 5(2)”. Section 21 amended

**21.** Section 23(3) of the Act is amended by deleting the word “criminal”. Section 23 amended

**22.** The Act is amended by inserting after section 23, Section 23A inserted the following section:

“Tipping off 23A. (1) A person commits an offence if—

(a) he knows or suspects that an authorised officer or an officer authorised by him under section 5(2) is acting, or is proposing to act, in

connection with an interception which is being or is about to be conducted; and

- (b) he discloses to any other person information or any other matter which is likely to prejudice any investigation which may be connected or related to the interception.

(2) A person who knowingly attempts, aids, abets, conspires, procures or otherwise facilitates the commission of an offence under subsection (1) commits an offence.

(3) A person who commits an offence under subsections (1) or (2) is liable—

- (a) on summary conviction, to a fine of five million dollars and to imprisonment for five years; or
- (b) on conviction on indictment, to a fine of twenty-five million dollars and to imprisonment for fifteen years.

(4) In proceedings against a person for an offence under subsection (1), it is a defence to prove that he did not know or suspect that the disclosure was likely to be prejudicial.”.

Section 25 amended

**23.** Section 25 of the Act is amended by inserting after subsection (2), the following subsection:

“(3) Regulations made under this section may provide that the contravention of any regulation constitutes an offence and may

prescribe penalties for any offence not exceeding a fine of two hundred and fifty thousand dollars and imprisonment for two years.”.

24. The Act is amended by inserting after section 25, Section 25A. inserted the following section:

“Power to  
make Rules  
Chap. 4:01 25A. The Rules Committee of the Supreme Court established by the Supreme Court of Judicature Act may, subject to negative resolution of Parliament, make Rules to govern proceedings under this Act.”.

25. Schedule 1 to the Act is amended by deleting the Schedule 1 amended words “intercepted communication” and substituting the words “[intercepted communication/stored communication/stored data]”.

26. Schedule 2 to the Act is amended by deleting the Schedule 2 amended words “in respect of communications”, and substituting the words “in respect of [communications/stored communication/stored data]”.

Passed in the Senate this      day of      , 2020.

*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      Senators.

*Clerk of the Senate*

I confirm the above.

*President of the Senate*

Passed in the House of Representatives this        day  
of                   , 2020.

*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                    members of the House.

*Clerk of the House*

I confirm the above.

*Speaker*

No. 1 of 2020

FIFTH SESSION  
ELEVENTH PARLIAMENT  
REPUBLIC OF  
TRINIDAD AND TOBAGO

**BILL**

AN ACT to amend the Interception of  
Communications Act, Chap. 15:08

Received and read the

First time.....

Second time.....

Third time.....