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Trinidad and Tobago

SENATE

BILL

AN ACT to amend the Evidence Act, Chap. 7:02

THE EVIDENCE (AMENDMENT) BILL, 2020

Explanatory Note

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

This Bill seeks to amend the Evidence Act, Chap. 7:02 to provide for the use of different identification procedures, interviews and oral admissions, special measures evidence by video link and matters related thereto.

Clause 1 of the Bill would provide the short title of the Bill and would also provide that the Act shall come into operation on a date fixed by the President by Proclamation.

Clause 2 of the Bill would provide for the interpretation of the words “the Act”.

Clause 3 of the Bill would provide for the insertion of a new Clause 1A which would provide for the interpretation of certain words in the Act.

Clause 4 of the Bill would provide for the insertion of a new Part IA—with the heading—Police and Criminal Evidence, Division 1, General— which would provide for a new clause 12 providing for the definition of certain words and phrases.

Clause 4 of the Bill would also provide for the heading—Division 2 Identification Procedures— and this Division would consist of 16 proposed new sections to the Evidence Act, Chap 7:02.

The proposed section 12A seeks to provide for the investigating officer recording the first description of a suspect, given by an eye-witness.

The proposed section 12B would provide for the use of photographs by an investigating officer to assist the eye-witness in establishing the identity of a suspect.

The proposed section 12C would provide for when an identification procedure should or should not be conducted.

The proposed section 12D would provide for specific responsibilities of an identification officer.

The proposed section 12E would provide for the five (5) main types of identification procedures and the order of priority under which the procedures should be conducted.

The proposed section 12F would provide that before an identification procedure is to be conducted, there are certain rights, consent and caution which the identification officer should ensure the suspect is aware of.

The proposed section 12G would provide that the suspect should be given a reasonable opportunity to have his representative present before an identification procedure is conducted. The clause would also provide that if, for whatever reason, the representative cannot be present, the identification officer shall ensure that a Justice of the Peace is able to attend to witness the procedure. The Clause would also provide that statements or objections made shall also be recorded by the identification officer who shall also ask that the suspect, representative, or Justice of the Peace, as the case may be, is asked to sign in the approved form as necessary.

The proposed section 12H would provide the procedure to be followed by the identification officer, where the representative is not present and a Justice of the Peace is instead present to witness an identification procedure.

The proposed section 12I would provide that before an identification is conducted, an eye-witness should be informed by the identification officer that the person he saw may or may not be present in the identification procedure.

The proposed section 12J would provide for the process where an identification procedure using video medium is to be conducted.

The proposed section 12K would provide for the process where an identification procedure using an identification parade is to be conducted.

The proposed section 12L would provide for the procedure to be followed with respect to an eye-witness participating in an identification parade.

The proposed section 12M would provide for the process to be followed where an identification in a public place with the consent of the suspect, is to be conducted.

The proposed section 12N would provide for the process to be followed where an identification in a public place without the consent of the suspect, is to be conducted.

The proposed section 12O would provide for the procedure where an identification by confrontation is to be conducted.

The proposed section 12P would provide that the Commissioner of Police shall consult with the Director of Public Prosecutions before any forms or recordings are destroyed.

Clause 4 would also include the heading—Division 3—Interview and Oral Admissions- which would consist of 10 proposed new sections to the Evidence Act, Chap. 7:02.

The proposed section 12Q would provide that the investigating officer should record the interview of any person suspected of, or charged with, committing an offence. The clause would also provide the process to be followed by the investigating officer recording the interview.

The proposed section 12R would provide that the Commissioner of Police shall cause to be established and maintained at each police station, a register to be known as the Register of Interviews, in which shall be recorded specific information.

The proposed section 12S would provide for the procedure to be followed by the interviewing officer during an interview.

The proposed section 12T would provide for the circumstances where an interviewee objects to a video or audio recording, of the interview, either before or during an interview.

The proposed section 12U would provide for the procedure to be followed by an interviewing officer at the conclusion of an interview.

The proposed section 12V would provide for the process to be followed where a master copy of an interview is to be used for copies, retained or destroyed.

The proposed section 12W would provide for the procedure to be followed where the seal of a master copy is to be broken.

The proposed section 12X would provide for the procedure to be followed by an investigating officer where a person who is suspected of or charged with committing an offence, makes an oral admission.

The proposed section 12Y would provide for the circumstances where a video or audio recording of the whole or part of a witness statement shall be admissible as evidence.

The proposed section 12Z would provide for Offences and where a person would be held to have committed an offence under this Part.

Clause 4 would also provide for the heading—Division 4—Special Measures and Evidence by Video Link— and would consist of 7 proposed new sections to the Evidence Act, Chap 7:02.

The proposed section 12AA would provide that a Court may issue a direction that special measures be used under certain circumstances. The clause would also provide a definition as to who would be considered a “vulnerable person”.

The proposed section 12AB would provide for the circumstances under which a Court may issue a special measure direction that closed proceedings be used.

The proposed section 12AC would provide for the circumstances under which a Court may issue a special measure direction that a witness be prevented, by means of a screen or other arrangement, from seeing or being seen by the accused person.

The proposed section 12AD would provide for the circumstances under which a Court may issue a special measure direction that a vulnerable witness be allowed to give evidence by means of a video link.

The proposed section 12AE would provide for the circumstances under which a Court may issue a special measure direction to ensure that a vulnerable witness is provided with such support persons or devices as it thinks fit.

The proposed section 12AF would provide for the circumstances under which a Court may issue a special measure direction for a person to appear before the Court or give evidence in criminal proceedings by means of a video link.

The proposed section 12AG would provide that where a direction is given under this Division, the Judge may give the jury such warning as the Judge considers appropriate to ensure that the fact that any direction that was given does not prejudice the accused person.

Clause 4 would also provide for a heading—Division 5—Supplemental Provisions—and would consist of 5 proposed new sections to the Evidence Act, Chap 7:02.

The proposed section 12AH would provide that a video recording by means of a closed circuit television camera (CCTV) shall be admissible as evidence.

The proposed section 12AI would provide for the Minister, in consultation with the Director of Public Prosecutions and the Commissioner of Police, to make Regulations.

The proposed section 12AJ would provide that notwithstanding the provisions of this Part, where a person under this Part is a child, the provisions of the Sexual Offences Act, the Children Act, the Judges Rules for Children 2016 and any other written law relating to a child, shall apply as necessary.

The proposed section 12AK would provide that a Court may refuse to allow evidence which the prosecution proposes to rely to

be given, if it appears to the Court that having regard to all the circumstances, the admission of the evidence would have such an adverse effect on the proceedings that the Court ought not to admit it.

The proposed section Clause 12AL would provide that a duly completed approved form shall be admissible as evidence.

Clause 5 would provide that section 14(1) of the Act is repealed.

Clause 6 would provide that section 14B of the Act is repealed and replaced with a new section 14B to provide for the admissibility of electronic records to be used as evidence in criminal proceedings. The clause would also provide for the Rules Committee established under the Supreme Court of Judicature Act to make Rules necessary for the purposes of this section.

Clause 7 would provide an amendment to section 15(2) of the Act.

Clause 8 would provide for that section 40 of the Act is repealed and replaced with a new section 40 to provide for the admissibility of electronic evidence in civil proceedings.

Clause 9 would provide for several amendments to section 41 of the Act. Section 41(3) is amended by renumbering the sections referred to in the chapeau, paragraph (c) is deleted and subsection (5) is repealed.

Clause 10 of the Act would provide for several amendments to section 43 of the Act.

Clause 11 would provide that the First Schedule, made pursuant to clause 12H, be inserted into the Act. This Schedule would provide the form for the Certification by the Justice of the Peace of the Conduct of an Identification Procedure.

Clause 12 of the Act would provide for an amendment to the Second Schedule to include the Director of the Financial Intelligence Unit of Trinidad and Tobago in the Schedule.

BILL

AN ACT to amend the Evidence Act, Chap. 7:02

[, 2020]

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

1. (1) This Act may be cited as the Evidence Short title and
commencement
(Amendment) Act, 2020

(2) This Act comes into operation on such date as is fixed by the President by Proclamation.

Interpretation
Chap 7:02

2. In this Act, “the Act” means the Evidence Act.

Section 1A inserted

3. The Act is amended by inserting after section 1, the following section:

“Interpretation 1A. In this Act, unless the context otherwise requires—

“business” includes every kind of business, profession, occupation, calling, operation or activity, whether carried on for profit or otherwise;

“document” includes any device by means of which information is retrieved, recorded or stored;

“statement” includes any representation of fact sworn or unsworn, whether made in words or otherwise.”.

Part 1A inserted

4. The Act is amended by inserting after section 11 the following Part:

“PART 1A

POLICE AND CRIMINAL EVIDENCE

Division 1

General

Definitions

12. In this Part, unless the context otherwise requires—

“appropriate adult” means a person eighteen years of age and over and who is a—

(a) social worker;

(b) welfare worker;

- (c) Justice of the Peace;
- (d) Children's Attorney as defined under section 88 of the Children Act;
- (e) any other responsible person with whom the child is comfortable; or
- (f) in the case of a person with a disability, the appropriate professional,

but does not include—

- (g) an accomplice;
- (h) a person, not being a parent, with previous convictions relating to a child or affecting that child within the last ten years;
- (i) a person, not being a parent who is on probation;
- (j) a member of the police service or any employee in the police service other than—
 - (i) a family member; or
 - (ii) a person with whom the child is comfortable; or
- (k) a person employed at a Rehabilitation Centre other than—
 - (i) a family member;

(ii) a person who is well known to the child; or

(iii) a person with whom the child is comfortable;

“approved form” means a form approved by the Commissioner of Police;

“audio recording” means an audio recording on a non-rewritable recording medium identifying the persons speaking;

“child witness” means a witness under the age of eighteen years;

“confrontation” means an occurrence where the suspect comes directly face to face with an eye-witness, without the consent of the suspect;

“Court” means a Judge, Master, District Court Judge, Magistrate, Registrar, Senior Magistracy Registrar and Clerk of the Court, Magistracy Registrar and Clerk of the Court, Clerk of the Court or Coroner as applicable;

“Court Interpreter” means any person who holds a valid licence under the Interpreters Act or who is appointed under section 8 of the Interpreters Act;

“eye-witness” in relation to the commission of an offence means a person who claims to have seen

another person in circumstances which tend to prove or disprove the involvement of that other person in the commission of an offence;

“identification officer ” means a police officer of the rank of Inspector or above who is not involved in the investigation and who shall be responsible for an identification procedure;

“identification procedure” means a method or system of ascertaining or determining the identity of a suspect for the purposes of an investigation as specified in section 12E (1)(a) to (e);

“interview” means the interrogation by a police officer of, or the taking of a statement or confession by a police officer, from a person suspected of, or charged with, committing an offence;

“interviewee”, in relation to an interview, means a person who is suspected of, or is charged with, committing an offence;

“interviewing officer” means a police officer who is conducting an interview;

“investigation” means a criminal investigation;

“investigating officer” means a police officer involved in a criminal investigation;

“master copy” means the video or audio recording of an interview which is labelled as the master copy pursuant to section 12U(1)(b)(i);

“Minister” means the Minister to whom responsibility for national security is assigned;

Chap. 28:02

“mental disorder” has the meaning assigned to it under section 2(1) of the Mental Health Act;

Chap. 15:01

“police officer” has the meaning assigned to it under section 3 of the Police Service Act and includes a member of the Special Reserve Police established under the Special Reserve Police Act;

Chap. 15:03

“Police Service” has the meaning assigned to it under section 3 of the Police Service Act;

“recording medium” includes any removable, physical video recording medium, audio recording medium or any other recording medium such as magnetic tape, optical disk or solid state memory card which can be played, or copied;

“Register” means the Register of Interviews established under section 12R(1);

“representative”, in relation to a person, means—

(a) his Attorney-at-law;

(b) in the case of a child, his parent or guardian, a person with responsibility for the child or an appropriate adult; or

(c) any other person nominated by the person;

“special measure direction” means a direction issued by the Court under section 12AA;

“suspect” means a person whom a police officer, with reasonable cause, suspects has committed an offence, but who is not yet charged with the offence or offences under investigation;

“video link” means a technological arrangement whereby a witness, without being physically present in the place where the proceedings are conducted, is able to see and hear and be seen and be heard by the following persons:

(a) the Judge, Master or Magistrate;

(b) the parties to the proceedings;

(c) the Attorney-at-law acting in the proceedings;

(d) the jury where there is one;

(e) any Court Interpreter or other person appointed to assist; or

(f) any other person who may be required to assist the Court in the conduct of its proceeding;

“video recording” means any recording on any medium from which a moving image may by any means be produced or transmitted, whether or not accompanied by a sound track;

“working copy” means a copy of a video or audio recording of an interview which is labeled as a working copy, pursuant to section 12U (1)(b)(ii).

Division 2

Identification Procedures

First
description

12A. (1) Before any identification procedure takes place, a record shall be taken by the investigating officer of the first description of the suspect given by the eye-witness.

(2) A record under subsection (1) shall—

(a) be made and kept in an approved form which—

(i) enables details of the description to be accurately produced from it, in a visible, audible or legible form; and

(ii) can be given to the suspect or his representative;

- (b) unless otherwise specified, be made before the eye-witness participates in any identification procedures; and
- (c) include—
 - (i) the distance the eye-witness was from the suspect;
 - (ii) the weather conditions at the time;
 - (iii) the lighting conditions at the time;
 - (iv) the length of time during which the eye-witness was able to observe the suspect;
 - (v) whether the eye-witness has seen the suspect before, and if so, on how many prior occasions;
 - (vi) whether there was anything impeding the view of the eye-witness;
 - (vii) the length of time that has elapsed between the original observation and subsequent identification to the police; and

- (viii) such other particulars that may be relevant.

(3) The investigating officer shall ensure that the first description of the suspect given by the eye-witness has been recorded in the approved form before the eye-witness is shown any photographs, a computerised or artist's composite or similar likeness, for the purpose of identification.

(4) The investigating officer shall—

- (a) ensure that a record of the first description of the suspect given by the eye-witness is also recorded in the Station Diary; and
- (b) have a video or audio recording the eye-witness giving the first description.

(5) The investigating officer under subsection (3), shall provide the eye-witness with the record of the first description and shall—

- (a) ask the eye-witness to confirm and sign the record of the first description given; and
- (b) where the eye-witness refuses to confirm and sign the first description as recorded, he shall record the refusal in the approved form and in the Station Diary.

(6) The investigating officer under subsection (3), shall provide the suspect or his representative with the record of the first description and shall—

- (a) ask the suspect or his representative to confirm receipt and sign the record of the first description provided; and
- (b) where the suspect or his representative refuses to confirm receipt and sign the first description as recorded, record the refusal in the approved form and in the Station Diary.

Use of
photographs
to assist in
identifying
suspects

12B. (1) Prior to the conduct of an identification procedure, an investigating officer may use photographs to assist in establishing the identity of a suspect.

(2) Where photographs are used pursuant to subsection (1), a minimum of twelve photographs shall be shown to an eye-witness at a time.

(3) An investigating officer shall ensure that—

- (a) only one eye-witness is shown photographs at any one time;
- (b) an eye-witness is not shown photographs in the presence or hearing of another eye-witness; and
- (c) all photographs which are shown to an eye-witness are, as far as

possible, images of persons with characteristics similar to the first description referred to in section 12 A(1).

(4) Where a suspect has been positively identified by an eye-witness, the investigating officer shall, in respect of the matter under investigation, take all necessary steps to ensure that all photographs used are kept securely and the movement of the photographs is carefully accounted for.

(5) A detailed record of the proceedings under this section shall be made and kept by the investigating officer in the approved form and recorded in the Station Diary, whether or not an identification of a suspect is made.

(6) A record under subsection (5) shall include—

- (a) anything said by the eye-witness about any identification; and
- (b) the names of all persons present while the photographs were being shown to the eye-witness.

(7) Where a person has not been positively identified by an eye-witness as a suspect, the Commissioner of Police shall ensure that any photograph used under this section is preserved for the purpose of evidence in all criminal proceedings to which the photographs relate.

(8) Photographs shall not be used to establish the identity of a suspect who is in custody.

Conduct of
identification
procedure

12C. (1) Subject to subsection (3), an identification procedure shall not be conducted unless a suspect is known and available and—

- (a) an eye-witness claims to have seen the suspect or purports to have done so; or
- (b) there is an eye-witness available who expresses an ability to identify the suspect or where there is a reasonable chance of an eye-witness being able to do so,

and the suspect does not admit to being the person the eye-witness claims to have seen or is able to identify.

(2) Subject to subsection (3), an identification procedure may also be conducted where the investigating officer in charge of a criminal investigation considers that it would be useful.

(3) Where an eye-witness and a suspect participate in an identification procedure in relation to the investigation of an offence, a subsequent identification procedure involving—

- (a) the same eye-witness and the same suspect shall not be conducted in respect of the same offence;
- (b) the same eye-witness and another suspect may be conducted in respect of the same offence; and

(c) the same suspect and another eye-witness may be conducted in respect of the same offence.

(4) An identification procedure need not be conducted—

(a) where it is not practicable to hold one; or

(b) where—

(i) it is not disputed that the suspect is already well-known to the eye-witness;

(ii) the eye-witness merely describes a piece of clothing or provides an insufficient description of the person he claims to have seen; or

(iii) the identification procedure would otherwise serve no useful purpose in proving or disproving the suspect was involved in committing the offence.

(5) An investigating officer may also conduct an identification procedure where—

(a) a suspect is known and available and the suspect admits to being the

person the eye-witness claims to have seen or is able to identify;

- (b) a suspect is in police custody and an eye-witness, with no previous knowledge of the suspect, saw the suspect commit the crime or saw him in circumstances relevant to the likelihood of his having done so;
- (c) the suspect and the witness are not well known to each other and neither party disputes this; or
- (d) the witness claims to know the suspect but the suspect denies this.

(6) Where an eye-witness had previously made an identification by photographs or a computerised or artist's composite or similar likeness, he shall not be reminded of such photograph or composite likeness or any description of the suspect, once a suspect is available for identification by any other means.

(7) Where an identification procedure is required, in the interest of fairness to a suspect or an eye-witness, it should be conducted as soon as is reasonably practicable.

Identification Officer 12D. An identification officer—

- (a) shall—
 - (i) be responsible for making arrangements for an

identification
procedure; and

- (ii) conduct an identification procedure in respect of an investigation and not be in any other way involved in the investigation; and

- (b) may direct one or more police officers, who are not in any way involved in the investigation, to assist him in the conduct of an identification procedure.

Types of
identification
procedures

12E. (1) Where an identification procedure is to be conducted, it shall, subject to practicability or the availability or cooperation of the suspect, be conducted in the following order of priority:

- (a) an identification parade in accordance with section 12K;
- (b) identification using video medium in accordance with section 12J;
- (c) identification in a public place with the consent of the suspect in accordance with section 12M;
- (d) identification in a public place without the consent of the suspect in accordance with section 12N;
- (e) identification by confrontation in accordance with section 12O; or

- (f) identification by verification where the identification officer asks the eyewitness:

“Is this the person you referred to as X in your statement?”.

(2) Notwithstanding the order of priority established under subsection (1), where it is impractical or circumstances are unsuitable to conduct an identification procedure in the order of priority, the identification officer shall offer the next identification procedure in the order of priority which is reasonably practicable in the circumstances, and shall record in detail, the reasons for so offering.

(3) An identification officer shall be responsible for ensuring that the proceedings of an identification procedure are recorded—

- (a) in the approved form; and
(b) in the Station Diary.

Rights,
consent and
caution

12F. (1) Where an identification procedure is to be conducted, the identification officer shall—

- (a) inform the suspect of his right to have a representative present before he decides to give consent to the identification procedure;
- (b) ensure that the suspect is cautioned in the following terms:

“You are not obliged to say anything unless you wish to do so but what you say may be put into writing and given in evidence”; and

(c) the identification officer shall record in the approved form his compliance with paragraphs (a) and (b) and—

(i) give a copy of the form to the suspect who shall also be asked to sign and confirm receipt of the form; and

(ii) where the suspect refuses to sign and confirm receipt of the form, he shall record the refusal in the approved form.

(2) Where the consent of the suspect is required to participate in an identification procedure and the suspect has been informed of all his rights under subsection (1), the suspect shall be given the opportunity—

(a) to give consent to—

(i) participating in an identification procedure; and

(ii) the type of identification procedure to be used; and

(b) to obtain advice from his representative, if practicable,

and his consent or refusal shall be recorded in the approved form and a copy of this form shall be given to the suspect or his representative who shall also be asked to sign and confirm receipt of the form.

(3) A refusal by the suspect to give consent shall not be a bar to an identification procedure being conducted under sections 12N or 12O.

(4) Where a suspect refuses to participate in an identification procedure or requests another identification procedure—

(a) he shall be asked whether he wishes to state his reasons for refusing and his reasons, if any, for requesting another identification procedure;

(b) the identification officer shall record in detail, in the approved form, the refusal and the reasons given under paragraph (a); and

(c) the suspect or his representative shall sign and confirm receipt of the approved form.

Suspect may
have a
representa-
tive

12G. (1) Subject to sections 12J (5) and 12N where a suspect is involved in an identification procedure, he shall be—

- (a) allowed a telephone call to contact his representative to attend the identification procedure; and
- (b) given a reasonable opportunity to have his representative present during the identification procedure.

(2) The suspect under subsection (1), shall be asked to indicate to the identification officer and sign on the approved form, whether or not he wishes to have his representative present.

(3) For the purposes of subsection (1), a suspect shall be given at least nine hours' notice of the time and place at which the identification procedure is to be conducted.

(4) Where the representative of the suspect is unable to attend the identification parade within the period referred to in subsection (3), the identification officer—

- (a) shall record the reason for the delay and the efforts made to secure the attendance of the representative; and
- (b) may appoint a Justice of the Peace to protect the interest of the suspect.

(5) Notwithstanding subsection (3), an identification procedure may be conducted before the expiration of the period of notice referred to in that subsection if his representative is present.

(6) Where a representative of the suspect is present at the identification procedure, the identification officer shall, in the presence of the suspect and prior to the conduct of the identification procedure inform the representative of—

- (a) the rights of the suspect and all other matters which the identification officer is required to inform the suspect under section 12F; and
- (b) whether the suspect has consented to the identification procedure.

(7) An identification officer shall, in the approved form, record the information given to a representative under subsection (6) and—

- (a) give a copy of the form to the representative who shall also be asked to sign and confirm receipt of the form; and
- (b) where the representative refuses to sign and confirm receipt of the form, he shall record the refusal in the approved form.

(8) An identification officer shall record in the approved form and in the Station Diary, any objections or statements made by the suspect and any unusual occurrences during the course of the identification procedure and shall provide the suspect or his representative with a copy of the form and the representative shall be asked to sign in the approved form, confirmation of the receipt of the copy of the form.

(9) Where the suspect or representative under subsection (8), refuses to sign in the approved form, the identification officer shall also make a note of the refusal in the approved form.

(10) The suspect or his representative shall be provided with details of the first description of the suspect which was given by each eye-witness who is to participate in an identification procedure, and the suspect or his representative shall be asked to sign in the approved form confirmation of receipt of the details of the first description.

(11) Where the suspect or the representative under subsection (10), refuses to sign in the approved form the identification officer shall also make a note of the refusal in the approved form.

(12) Where any material in the form of an image, composite, sketch or video has been published, broadcasted or released to the media by the Police Service for the purpose of recognising or tracing the suspect, the identification officer shall obtain a copy of the material and allow the

suspect and his representative to view the material, provided it is practical and would not unreasonably delay the identification procedure.

(13) Where the suspect or his representative refuses to sign in the approved form under this section, the identification officer—

- (a) shall ensure that a Justice of the Peace is present to witness the identification procedure; and
- (b) shall request that the Justice of the Peace sign in the approved form.

Where suspect
does not
have a
representative

12H. (1) Where a suspect involved in an identification procedure is unable to secure a representative for himself pursuant to section 12G (1) to (3), the identification officer shall be responsible for ensuring that a Justice of the Peace is present to witness the procedure.

(2) Where a Justice of the Peace is present at the identification procedure he shall, prior to the conduct of the identification procedure, be satisfied that the suspect was informed of his rights by the identification officer and has consented under section 12F to the conduct of the identification procedure.

(3) A Justice of the Peace under subsection (2) shall ensure that—

- (a) the identification officer informs the suspect of all matters of which the

identification officer is required to inform him under section 12F; and

- (b) immediately before the identification procedure begins, the suspect is cautioned by the identification officer in the following terms:

“You are not obliged to say anything unless you wish to do so but what you say may be put into writing and given in evidence”,

First Schedule

and shall so certify in the prescribed form.

- (4) The Justice of the Peace shall—

- (a) record any objections or statements made by the suspect and any unusual occurrences during the course of the identification procedure in the prescribed form; and
- (b) inform the suspect of any failure of the identification officer to discharge his functions under section 12F.

(5) The Justice of the Peace shall be provided with details of the first description of the suspect which was given by each eye-witness who is to participate in an identification procedure.

(6) Where any material in the form of an image, composite, sketch or video has been published, broadcast or released to the media by the Police Service for the purpose of recognising or tracing the suspect, the identification officer shall obtain a copy of the material and allow the Justice of the Peace, to view the material, provided it is practical and would not unreasonably delay the identification procedure.

Eye-witness to be informed that person he saw may not be in the identification procedure

12I. Before an identification procedure is conducted, an eye-witness shall be informed by the identification officer that—

- (a) the person he claims to have seen may or may not be in the identification procedure; and
- (b) if the person he claims to have seen is or is not in the identification procedure, he should report this to the identification officer who shall record the information in the Station Diary.

Identification using video medium

12J. (1) An identification procedure using video medium shall be conducted—

- (a) by showing an eye-witness moving images of the suspect together with similar images of at least eight other persons who resemble the suspect;

- (b) by ensuring that the eye-witness is shown at least nine images before an identification is made; or
- (c) in circumstances where there are two suspects of roughly similar appearance by—
 - (i) showing an eye-witness moving images of the suspects together with similar images of at least twelve other persons who resemble the suspects ; and
 - (ii) ensuring that the eye-witness is shown at least fourteen images before an identification is made.

(2) The identification officer shall ensure that where there is more than one eye-witness, only one eye-witness is shown the video images at a time.

(3) Where a video identification procedure is used, the persons referred to in subsection (1) shall, as far as possible, resemble the suspect in terms of race, colour, age and general appearance.

(4) All the images referred to in subsection (3), shall be shown to the eye-witness, individually and sequentially.

(5) A suspect shall not be present during an identification using video medium.

Identification
parade

12K. (1) An identification parade shall be conducted in a police station or other building under the control of, or regularly used by the Police Service in the normal conduct of their duties, in a room equipped with a screen permitting the eye-witness to view the suspect without himself being seen.

(2) An identification parade shall comprise a lineup of persons as follows—

- (a) one suspect and at least eight other persons who resemble the suspect; or
- (b) two suspects who resemble each other and at least twelve other persons who resemble the suspects.

(3) Where an identification parade is conducted, members of the parade shall, as far as possible, resemble the suspect in terms of race, colour, age, height and general appearance.

(4) Where an identification parade is conducted under subsection (3), the suspect, his representative or a Justice of the Peace shall be given an opportunity to object to any one or more persons being used in the lineup of persons or to the arrangements for the identification parade and such objections shall be recorded, in accordance with sections 12G(8) and 12H(4), by the identification officer.

(5) Where the suspect, his representative or a Justice of the Peace objects under subsection (4), the identification officer shall—

- (a) where practicable, take steps to remove the grounds for the objection; or
- (b) where it is not practicable to take steps to remove the grounds for the objection, the suspect, his representative or the Justice of the Peace shall be told why his objection cannot be met and this shall be recorded in the approved form.

(6) Where an identification parade involves the use of a screen which permits an eye-witness to see the composition of the identification parade without being seen, the identification parade shall be conducted and everything said to, or by, an eye-witness shall be said in the hearing of the suspect, his representative or a Justice of the Peace.

(7) During the conduct of the identification parade, the identification officer shall at all times be in front of, and facing the parade in such a way so as not to obstruct the view of the identifying eye-witness and shall remain impassive in both demeanour and expression.

(8) Where a one-way mirror is not used and the eye-witness wishes to walk along the back of the identification parade,

he may be allowed to do so alone while the identification officer remains in front of the parade.

(9) The identification officer conducting an identification parade shall ensure that—

- (a) the identification parade is recorded by video recording; and
- (b) the movement of persons when entering or exiting the area in which the identification parade is being conducted is recorded by video recording.

(10) A copy of the original recording taken under subsection (9)(a) and (b) shall be supplied on request, to the suspect or his representative within seven days.

(11) The video recording referred to under subsection (9) shall be admissible in evidence.

Eye-witness
in
identification
parade 12L. (1) Each eye-witness to an identification parade shall be brought into the parade room one at a time, and no more than one eye-witness shall be in the parade room at a time while the identification parade is being conducted.

(2) The identification officer conducting an identification parade, shall be responsible for making proper arrangements to ensure that before an eye-witness attends an identification parade, he is not able to—

- (a) communicate with any other eye-witness about the case or overhear

another eye-witness who has already seen the identification parade;

(b) see any member of the identification parade;

(c) see, or be reminded of, any photograph or description of the suspect or be given any other indication as to the identity of the suspect; or

(d) see the suspect before or after the identification parade.

(3) The identification officer shall ensure that before an identification parade is conducted, the following are not discussed with an eye-witness—

(a) the composition of the identification parade; or

(b) whether a previous eye-witness participating in the identification parade, has made an identification.

(4) Where an eye-witness makes a request to an identification officer that a member of the identification parade speak, move or adopt any specified posture, the identification officer shall require all members of the parade to comply with the request, whether or not the eye-witness is able to identify the suspect on the basis of appearance only.

(5) Where a member of an identification parade refuses to comply with a request under subsection (4), the identification officer shall temporarily stop the parade and record in detail, in the

approved form, the refusal and why the identification parade was stopped.

(6) After the identification officer has recorded the reason for the identification parade being temporarily stopped under subsection (5), he shall remove and replace the member of the identification parade who refused to comply and resume the identification parade.

(7) Where, during the course of an identification parade, a suspect indicates to the identification officer that he no longer wishes to participate in the parade, the identification officer shall—

- (a) stop the parade and record in detail in the approved form, the refusal and why the identification parade was stopped;
- (b) provide the suspect with a copy of the approved form and ask the suspect to sign for the receipt of such form; and
- (c) where the suspect refuses to sign and confirm receipt of such form, a record of this refusal shall be made in the approved form.

Identification
in public place
with consent
of suspect

12M. (1) An identification in a public place under this section may be conducted with the consent of the suspect, which shall be recorded in the approved form, where the suspect is not in police custody or it is impossible or impractical to conduct an identification procedure using video medium or an identification parade.

(2) The suspect under subsection (1), shall be provided with a copy of the approved form by the identification officer and he shall be asked to sign to confirm the receipt of such form.

(3) Where an identification procedure under this section is being conducted, an identification officer may take an eye-witness to a public place in an area where—

- (a) other people are either passing by or waiting around informally, in groups such that the suspect is able to join them and be capable of being seen by an eye-witness at the same time as others in the group; or
- (b) the suspect lives, is employed or frequents or may be seen under normal conditions so that the eye-witness may or may not identify him.

(4) An identification procedure under this section may also be valid where, at the time of being seen by an eye-witness, the suspect was on his own rather than in a group.

(5) Section 12L (1), (2)(a),(c),(d) and (3)(b) shall apply with the necessary modifications to a public identification procedure under this section.

Identification
in public
without
consent of
suspect

12N. (1) An identification in a public place under this section may be conducted without the consent of the suspect where it

is impossible or impractical to conduct an identification procedure using video medium, an identification parade or an identification in a public place with the consent of the suspect.

(2) Where the identification procedure under this section is to be done without the consent or co-operation of the suspect, the identification officer shall ensure that the procedure is carried out in the presence of a Justice of the Peace.

(3) The conduct of an identification procedure under this section without the consent of the suspect, may only be conducted where—

- (a) the suspect is not in custody; or
- (b) the suspect has refused to give his consent to the conduct of a procedure under section 12M or it is impossible or impractical to obtain the consent of the suspect.

(4) An identification in a public place under this section, may be conducted in places such as those referred to in section 12M(3)(b) and (4).

Identification
by
confrontation

12O. (1) Where a suspect who is in police custody refuses to consent to any other identification procedure or it is impossible or impractical to conduct an identification procedure using video medium, an identification parade, identification in a public place with the consent of the suspect or an identification in a public place

without the consent of the suspect, an identification by confrontation may be used, and a detailed record of any refusal shall be made by the identification officer in the approved form.

(2) The suspect under subsection (1) shall be provided with a copy of the approved form by the identification officer and he shall be asked to sign for the receipt of the copy of the form.

(3) Where an identification by confrontation is to be conducted, the suspect shall be—

(a) informed by the identification officer, that because of his refusal to consent to any identification procedure, he shall now be confronted by each eye-witness to the matter for which he has been arrested; and

(b) cautioned by the identification officer in the following terms:

“You are not obliged to say anything unless you wish to do so but what you say may be put into writing and given in evidence”.

(4) An identification by confrontation shall be conducted in a police station or other building under the control of, or regularly used by, the Police Service in the

normal conduct of their duties, either in a normal room or one equipped with a screen, permitting the eye-witness to view the suspect without himself being seen.

(5) Where the room is equipped with a screen, the representative of the suspect or a Justice of the Peace shall be present on the side of the screen on which the eye-witness is to make the identification.

(6) An identification officer conducting an identification by confrontation shall ensure that the procedure is recorded by video recording.

Destruction
of forms and
recordings

12P. The Commissioner of Police shall consult with the Director of Public Prosecutions, prior to the destruction of any approved forms and recordings of identification procedures.

Division 3

Interviews and Oral Admissions

Recording of
interviews

12Q. (1) Subject to subsections (2) to (4), an investigating officer shall record the interview of any person suspected of, or charged with, committing an offence.

(2) An interview under subsection (1), shall be recorded by video recording unless it is not reasonably practicable to do so.

(3) Where an interview is to be conducted under this section, a person suspected of, or charged with, committing an offence shall be given a reasonable opportunity to have his representative present before the interview is conducted.

(4) Where it is not reasonably practicable to record an interview by video recording, the interviewing officer shall record in the approved form and in the Station Diary, the reason for not being able to record the interview by video recording.

(5) Where it is not reasonably practicable to record an interview by video recording but it is reasonably practicable to record the interview by audio recording, the interview shall be recorded by audio recording.

(6) Where it is not reasonably practicable to record the interview by either video or audio recording, the interview shall be recorded in writing.

(7) Where a video recording of an interview is being made under subsection (2), the camera shall be situated so as to ensure coverage of as much of the surroundings as is practicably possible, whilst the interview is taking place.

(8) Any removable recording medium used in the recording of an interview shall be new and previously unused.

(9) For the purposes of this section, “removable recording medium” includes magnetic tape, optical disc, solid state memory card or any removable physical recording medium which can be played and copied.

(10) An interviewing officer shall record in the approved form and in the Station Diary, any interview under this section and any reason why it was not reasonably practicable to comply with any of the provisions of this section.

(11) The recording of an interview under this section which was conducted, subject to section 12R, shall be admissible as evidence.

Register of
interviews

12R. (1) The Commissioner of Police shall cause to be established and maintained at each police station, a register to be known as “the Register of Interviews” in which shall be recorded the following information:

- (a) the reference number of the interview;
- (b) the name of the interviewee;
- (c) the number, rank and name of the interviewing officer;
- (d) the date, time and place of the interview;
- (e) the time of commencement and completion of the interview;
- (f) the manner in which the interview is recorded;
- (g) the names and calling of all other persons present during the interview;
- (h) whether any request was made by the interviewee;
- (i) what, if anything, was done to facilitate such request under paragraph (h); and
- (j) such other information as may be prescribed by Regulations.

(2) An interviewee or his representative shall on request, be provided with a copy of the entry in the Register of Interviews in relation to his interview.

(3) Where the interviewee made a telephone call to his representative, a note of that telephone call shall be recorded in the Station Diary.

(4) Where a request is made and a copy of an entry is provided pursuant to subsection (2)—

- (a) a note of this request shall be made in the Register of Interviews;
- (b) the interviewee or his representative shall be asked to sign and confirm receipt of the copy; and
- (c) where the interviewee or his representative refuses to sign and confirm receipt of the copy, a note of this refusal shall also be made in the Register of Interviews.

(5) Where any request for a copy of an entry is granted under this section—

- (a) the extract of the request by the interviewee or his representative;
- (b) the signature of the interviewee or his representative for receipt of the copy of the entry; or

- (c) the refusal of the interviewee or his representative to sign and confirm receipt of the copy of the entry,

shall be admissible as evidence.

Recording of
interview

12S. (1) At the commencement of an interview, the interviewing officer shall first state—

- (a) his number, rank and name and that of any other officer present;
- (b) the name of the interviewee;
- (c) the date, time of commencement and place of the interview; and
- (d) the offence for which the interview is being conducted.

(2) The interviewing officer under this section shall also—

- (a) inform the interviewee about the recording and point out the sign or indicator which shows that the recording equipment is activated and recording;
- (b) ask the interviewee and any other person present, including his representative to identify themselves; and

(c) caution the interviewee as follows:

“You are not obliged to say anything unless you wish to do so but what you say may be put into writing and given in evidence”.

(3) The interviewee may be allowed to communicate with his Attorney-at-law, relative or other person if no hindrance is reasonably likely to be caused to the process of investigation, or to the administration of justice by his doing so.

(4) The interviewee shall not only be informed orally of the rights and facilities available to him, but in addition, notices describing these rights and facilities shall be displayed at convenient and conspicuous places at police stations and the attention of the interviewee shall be drawn to these notices.

(5) Reasonable arrangements shall be made for the comfort and refreshment of the persons in attendance for the interview.

(6) Wherever practicable, the interviewing officer and interviewee shall be seated.

(7) At the conclusion of the interview, the interviewee shall be offered the opportunity to clarify, add to or correct anything that he said during the interview, and any such clarification, addition or correction he makes shall also be recorded.

(8) An interviewing officer shall record the entire interview and ensure that the entire video or audio recorded interview is re-played to the interviewee or, where applicable, re-read to the interviewee in accordance with section 12Q(6).

Objection by interviewee to video or audio recording

12T. (1) Where an interviewee objects to a video or audio recording of an interview either at the outset or during the interview or during a break in the interview, the objection of the interviewee shall be recorded on the recording media by the interviewing officer.

(2) When an objection under subsection (1) has been recorded or the interviewee has refused to have his objection recorded, the interviewing officer shall state orally that he is turning off the recording equipment, give his reasons for so doing, turn the equipment off and make a written record of the remainder of the interview.

Requirements of interviewing officer at conclusion of interview

12U. (1) At the conclusion of an interview, the interviewing officer shall—

(a) make a note in his pocket diary, or by any other available means of note-taking, and in the Station Diary of—

(i) the fact that the interview has taken place and has been recorded; and

(ii) the time, duration and date of the interview;

- (b) in the case of an interview that is recorded by video or audio recording—
- (i) place his marking on the recording medium, label it as the master copy and request the interviewee or his representative to sign it;
 - (ii) make two copies of the master copy in the presence of the interviewee or his representative, label each copy as a working copy, give one copy to the interviewee and give one copy to the investigating officer; and
 - (iii) seal the master copy in the presence of the interviewee or his representative; and
- (c) ensure that the required information is entered into the Register of Interviews.

(2) Where an interviewee or his representative refuses to sign the master copy of a recording medium, as requested under subsection (1)(b)(i), the interviewing officer shall cause the refusal to be noted in the Register of Interviews.

(3) Where a transcript of the recording of an interview is made, the interviewee or his representative shall be given a copy of the transcript within seven days of the making of the transcript.

Master copy 12V. (1) An interviewing officer shall submit the sealed and marked master copy to a police officer of the rank of Assistant Superintendent or above.

(2) The Commissioner of Police shall make arrangements to ensure that all master copies are kept securely and their movements fully accounted for, whether or not any Court proceedings are commenced in respect of the relevant interviewee.

(3) A master copy shall be retained up to and until the final determination of the court matters in which the recordings are to be used.

(4) The Commissioner of Police shall consult with the Director of Public Prosecutions, prior to the destruction of any master copy.

Breaking seal of a master copy 12W. (1) No person shall break the seal of a master copy unless it is done in accordance with this section.

(2) Where it becomes necessary to break the seal of a master copy in order to make a copy of the master copy, because a working copy—

- (a) is destroyed or otherwise unavailable;
- (b) can no longer be copied;
- or

(c) is incapable of being used to review the interview,

the seal shall be broken by a police officer of the rank of Assistant Superintendent or above in the presence of a Justice of the Peace, and where practicable, the interviewee or his representative.

(3) An interviewee or his representative shall be informed of the intention to break the seal of the master copy and shall be given a reasonable opportunity to be present.

(4) Where an interviewee or his representative is present at the breaking of a seal under subsection (2), either of them shall be invited to reseal the master copy and sign the seal.

(5) Where an interviewee or his representative refuses to reseal the master copy and sign the seal, the Justice of the Peace shall reseal the master copy and sign the seal.

(6) Where the seal of a master copy is broken and a copy made of the master copy and the master copy is resealed, the police officer referred to in subsection (2), shall in the approved form record the procedure followed, including the date, time and place and all persons present when the seal of the master copy was broken and when the master copy was resealed.

(7) Where the interviewee or his representative is not present when the seal of a master copy is broken, the seal shall be broken in the presence of a Justice of the Peace who shall also reseal the master copy and sign the seal.

(8) The police officer referred to in subsection (2), shall ensure that the procedure followed, including the date, time and place and all persons present when the seal of the master copy was broken and when the master copy was resealed, is recorded in the Station Diary and where practicable, by video recording.

Oral
admission

12X. (1) Where a person who is suspected of, or charged with committing an offence, makes an oral admission, the investigating officer shall immediately—

(a) caution the person as follows:

“You are not obliged to say anything unless you wish to do so but what you say may be put into writing and given in evidence”;

(b) make a note in his pocket diary and the Station Diary of any oral admission made by the person to him; and

(c) record the oral admission by video or audio recording.

(2) A note taken under subsection (1) shall—

(a) be read to the person who shall also be asked to sign the note; and

(b) be signed by the police officer taking the note.

(3) Where a person under this section refuses to sign the note, a written record shall be taken of the request being made and the refusal of the person to accede to the request.

(4) Where it is not practical to make an immediate note of the oral admission, the investigating officer shall, as soon as is reasonably practicable, make a note of the oral admission in his pocket diary and in the Station Diary.

(5) A note made in the Station Diary under subsection (4), shall—

(a) be read to the person in the presence of a police officer senior in rank to the investigating officer and the person shall be asked to sign it; and

(b) be signed by the police officer referred to in paragraph (a).

(6) Where the person refuses to sign the note under subsection (5), a written record shall be taken of the request being made and the refusal of the person.

(7) Where the person is unable to affix his signature, the investigating officer shall read the oral admission to the person and request that he puts his mark or thumbprint on it and the oral admission shall also contain a declaration that it was read to the person and he appeared to understand it and agreed to it.

Video or
audio
recorded
evidence of
witness

12Y. (1) A video or audio recording of the whole or part of a witness statement shall be admissible as evidence.

(2) Where a video or audio recording is admitted as evidence pursuant to subsection (1), all such evidence shall be admissible to the same extent and have the same effect as if it were evidence given in direct oral testimony.

(3) The admission of a video or audio recording as evidence shall not be seen as a bar to the same witness, where appropriate, being allowed to give direct oral testimony.

(4) Where direct oral testimony referred to under subsection (3) is given, the witness shall not be asked to address any issue in examination-in-chief, cross-examination or re-examination that in the estimation of the Court has already been adequately addressed in a recording under subsection (1).

Chap. 7:02

(5) The Audio Visual Recording Rules shall apply *mutatis mutandis* to a video or audio recording of the whole or part of a witness statement.

Offences

12Z. (1) Any person who without lawful authority—

- (a) possesses, plays or offers to supply a recording of an interview under this Division to any person; or
- (b) copies, tampers with, modifies, erases or publishes a recording of an interview under this Division,

commits an offence.

(2) A person who commits an offence under subsection (1) is liable—

- (a) on summary conviction to a fine of one hundred thousand dollars and to imprisonment for two years; or
- (b) on conviction on indictment to a fine of five hundred thousand dollars and to imprisonment for seven years.

(3) For the purposes of this section, “lawful authority” means-

- (a) the Commissioner of Police or any person authorised by him; or
- (b) the Director of Public Prosecutions or any person authorised by him.

Division 4

Special Measures and Evidence by Video Link

Vulnerable
witnesses
and special
measures
accorded
to them

12AA. (1) Subject to subsection (2), in any criminal proceedings, the Court may, on an application made by a party to the proceedings or on its own motion in the interests of justice, issue a direction that a special measure or a combination of special measures shall be used for the giving of evidence by a witness.

(2) Before issuing a special measure direction, the Court shall be

satisfied that—

- (a) the witness is a vulnerable witness; and
- (b) the quality of the evidence given by the witness is likely to be diminished by reason of fear or distress on the part of the witness in connection with testifying in the proceedings.

(3) For the purposes of this section, “vulnerable witness” means a witness whose ability to give evidence or the quality of whose evidence is likely to be affected by reason of—

- (a) the age or immaturity of the witness;
- (b) the physical disability or mental disorder of the witness ;
- (c) any trauma suffered by the witness;
- (d) the fear of intimidation of the witness; or
- (e) the witness being a virtual complainant in proceedings for a sexual offence.

Closed
proceedings

12AB. (1) The Court may, where it considers it appropriate to protect the identity of a witness from the public, or to protect a witness from being intimidated by the presence of other persons in the courtroom, issue a special measure direction that closed proceedings be utilised.

(2) Where closed proceedings are utilised under this section, no person other than the Judge, Master, Magistrate or Attorneys-at-law acting in the proceedings, the jury, Court Interpreter or any other person who may be required to assist the Court in the conduct of its proceedings and the accused person shall be present in the courtroom during the giving of the testimony.

Screening
witness from
accused

12AC. (1) Where the Court considers it appropriate, the Court may issue a special measure direction that a witness, while giving testimony or being sworn in Court, be prevented by means of a screen or other arrangement from seeing or being seen by the accused person.

(2) The screen or other arrangement referred to in subsection (1) shall not prevent the witness from seeing or being seen by—

- (a) the Judge, Master and jury;
- (b) an Attorney-at-law acting in the proceedings; and
- (c) any Court Interpreter or other person appointed to assist the witness.

Evidence of
vulnerable
witness by
video link

12AD. (1) Subject to subsections (2) and (3), where the Court considers it appropriate, the Court may issue a special measure direction that a vulnerable witness give evidence by means of a video link.

(2) The Court may, where it deems it appropriate in the interests of

justice, refuse the use of video link as a special measure, where—

- (a) the Court considers that the special measure would not be likely to improve the quality of the evidence; or
- (b) the witness requests that the special measure not be used and the Court is satisfied that the quality of the evidence would not be diminished as a result.

(3) The Court, in deciding whether to allow evidence of a child witness by video link, shall take into account—

- (a) the age and maturity of the child;
- (b) the ability of the child to understand what is involved in giving evidence; and
- (c) any other matters that the Court considers relevant.

(4) Where the witness appears by video link, he shall be deemed to be present in the courtroom.

Support
persons
and devices

12AE. (1) The Court may issue a special measure direction to ensure that a vulnerable witness is provided with such support person as it thinks fit.

(2) A support person under subsection (1) shall, as far as is reasonably practicable, ensure that a vulnerable

witness is comfortable and secure while giving evidence.

(3) Where necessary, a vulnerable witness shall be provided with, or allowed to use devices, as the Court considers appropriate, to assist him to overcome any disability, disorder or impairment that may affect the ability of the witness to hear or understand questions and communicate answers.

Appearance
or giving of
evidence by
video link

12AF. (1) Notwithstanding section 12AD, a Court may, on application by a party or on its own motion, issue a direction for a person to appear before the Court or give evidence in criminal proceedings by means of a video link.

(2) In deciding whether to issue a direction under subsection (1), the Court shall take into account—

(a) whether or not it is reasonably practicable to secure the physical attendance of the person at the proceedings, having regard to—

(i) the expense that would be incurred in order to bring the person to attend the proceedings;

(ii) any logistical difficulties in the person attending the proceedings;
or

- (iii) any other factors which the Court considers relevant;
- (b) whether the use of a video link is reasonably practicable to facilitate administrative procedures where the accused person is held on remand pending his next Court appearance and evidence will not be given at the proceedings; and
- (c) whether the use of a video link is appropriate in the interests of justice.

(3) In determining whether the use of video link is appropriate in the interests of justice under subsection (2), the Court shall consider the following:

- (a) the views expressed by, or submissions made on behalf of the person or a party;
- (b) the nature of the evidence to be given;
- (c) the availability and quality of the technology that is to be used;
- (d) the ability of the party or the person, to participate effectively in the proceedings;
- (e) the ability of the accused person to consult and instruct his Attorney-at-law privately; and

(f) any other matter the Court considers relevant.

(4) The Court, in determining whether to allow an accused person to give evidence by video link, shall, in addition to the matters specified in subsections (2) and (3), take into account the following:

- (a) the risk that the personal security of a particular person including the accused person, may be endangered if the accused person appears in the courtroom or any other place where the Court is sitting;
- (b) the risk of the accused person escaping, or attempting to escape from custody when attending the courtroom or any other place where the Court is sitting;
- (c) the behaviour of the accused person when appearing before a Court in the past;
- (d) the conduct of the accused person while in custody, including the conduct of the accused person during any period in the past where the accused person was being held in custody in a prison;

- (e) safety and welfare considerations in transporting the accused person to the courtroom or any other place where the Court is sitting;
- (f) the efficient use of available judicial and administrative resources; and
- (g) any other relevant matter raised by a party to the proceedings for the making of the direction.

(5) Where evidence is given by a person by means of a video link, the person is deemed to be physically present at the proceedings and the evidence shall be admissible to the same extent and effect as if it were given in direct oral testimony.

Direction not
to prejudice
accused

12AG. Where the Court gives a direction under this Division and the particular proceedings require a trial by jury, the Judge may give the jury such warning as the Judge considers appropriate, to ensure that the fact that a direction was given does not prejudice the accused person.

Division 5

Supplemental Provisions

Closed
Circuit
television
(CCTV)

12AH. A video recording recorded by means of a closed circuit television camera shall be admissible as evidence.

Regulations

12AI. The Minister in consultation with the Director of Public Prosecutions and the

Commissioner of Police, may make Regulations—

- (a) prescribing the procedure to be followed, the type of equipment to be used and the arrangements to be made where a person is to use any audio or video recording medium;
- (b) prescribing the types of photographs, screens and support devices;
- (c) prescribing forms for the purposes of this Part; and
- (d) providing for such other matters as are necessary or expedient for giving effect to this Part.

Provisions of
other Acts and
Rules to apply
Chap 11:28
Chap. 46:01

12AJ. Notwithstanding the provisions of this Part, where a person under this Part is a child, the provisions of the Sexual Offences Act, the Children Act, the Judges Rules for Children, 2016 and any other written law relating to a child, shall apply as necessary.

Exclusion of
unfair
evidence

12AK. In any criminal proceedings, a Court may refuse to allow evidence on which the prosecution proposes to rely to be given, if it appears to the Court that having regard to all the circumstances, including—

- (a) any breach of this Part or any regulations made under section 12AI; and
- (b) the circumstances in which the evidence was obtained,

the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the Court ought not to admit it.

Approved form admissible as evidence 12AL. A duly completed approved form referred to under this Part, shall be admissible as evidence.”.

5. The Act is amended by repealing section 14(1).

Section 14
amended

6. The Act is amended by repealing section 14B and substituting the following section:

Section 14B
amended

“Electronic evidence in criminal proceedings 14B. (1) In any criminal proceedings, nothing in any written law or the common law shall apply to deny the admissibility of an electronic record in evidence on the sole ground that it is an electronic record.

(2) Where a device or process is one that, or is of a kind that, ordinarily produces or accurately communicates an electronic record, the court shall presume that in producing or communicating that electronic record on the occasion in question, the device or process produced or accurately communicated the electronic record, unless evidence sufficient to raise doubt about the presumption is adduced.

(3) The hearsay rule does not apply to a representation contained in a document recording an electronic communication so far as the representation is a representation as to—

(a) the identity of the person from whom or on whose behalf the electronic communication was sent;

- (b) the date on which or the time at which the electronic communication was sent; or
- (c) the destination of the electronic communication or the identity of the person to whom the electronic communication was addressed.

(4) Any person seeking to admit an electronic record in any criminal proceeding has the burden of proving its authenticity by evidence capable of supporting a finding that the electronic record is that which it is purported to be.

(5) Where it is intended to prove the authenticity of an electronic record as evidence, it is permissible to have the evidence of the expert relating to the authenticity of an electronic record presented in the form of a certificate.

(6) The certificate under subsection (5) shall be prepared by—

- (a) a person occupying a responsible position in relation to the operation or management or a specified security procedure provider or a security procedure provider accepted by the Court; or
- (b) an expert appointed or accepted by the Court.

(7) A person who, in a certificate tendered under subsection (5) in a Court

makes a statement which he or she knows to be false or does not reasonably believe to be true, commits an offence and is liable—

- (a) on summary conviction to a fine of one hundred thousand dollars and to imprisonment for a term of two years; or
- (b) on conviction on indictment to a fine of five hundred thousand dollars and to imprisonment for a term of seven years.

Chap. 4:01 (8) The Rules Committee established by the Supreme Court of Judicature Act, may, subject to negative resolution of Parliament, make Rules necessary for the purposes of this section.

(9) For the purposes of this Part—

“electronic communication” means any communication that the parties make by means of electronic records;

“electronic record” means a record generated, communicated, received or stored by electronic means in an information system or for transmission from one information system to another;

“information” includes data, text, images,

sound, codes, telephone communications, computer programs, software and databases;

“information system” means a system for generating, sending, receiving, storing or otherwise processing electronic records, and includes a telephone system.”.

Section 15 amended **7.** The Act is amended in section 15(2) by deleting the word “confer on” and substituting the words “deny”.

Section 40 amended **8.** The Act is amended by repealing section 40 and substituting the following section:

“Electronic evidence in civil proceedings”
 40. (1) In any civil proceedings, nothing in any written law or the common law shall apply to deny the admissibility of an electronic record in evidence on the sole ground that it is an electronic record.

(2) Where a device or process is one that, or is of a kind that, ordinarily produces or accurately communicates an electronic record, the court shall presume that in producing or communicating that electronic record on the occasion in question, the device or process produced or accurately communicated the electronic record, unless evidence sufficient to raise doubt about the presumption is adduced.

(3) The hearsay rule does not apply to a representation contained in a document recording an electronic

communication so far as the representation is a representation as to—

- (a) the identity of the person from whom or on whose behalf the electronic communication was sent;
- (b) the date on which or the time at which the electronic communication was sent; or
- (c) the destination of the electronic communication or the identity of the person to whom the electronic communication was addressed.

(4) Any person seeking to admit an electronic record in any civil proceeding has the burden of proving its authenticity by evidence capable of supporting a finding that the electronic record is that which it is purported to be.

(5) Where it is intended to prove the authenticity of an electronic record as evidence, it is permissible to have the evidence of the expert relating to the authenticity of an electronic record presented in the form of a certificate.

(6) The certificate under subsection (5) shall be prepared by—

- (a) a person occupying a responsible position in relation to the operation or management or a specified security procedure provider or a security procedure provider accepted by the Court; or

(b) an expert appointed or accepted by the Court.

(7) A person who, in a certificate tendered under subsection (5) in a Court, makes a statement which he or she knows to be false or does not reasonably believe to be true, commits an offence and is liable—

(a) on summary conviction to a fine of one hundred thousand dollars and to imprisonment for a term of two years; or

(b) on conviction on indictment to a fine of five hundred thousand dollars and to imprisonment for a term of seven years.

(8) For the purposes of this Part—

“electronic communication” means any communication that the parties make by means of electronic records;

“electronic record” means a record generated, communicated, received or stored by electronic means in an information system or for transmission from one information system to another;

“information” includes data, text, images,

sound, codes, telephone communications, computer programs, software and databases;

“information system” means a system for generating, sending, receiving, storing or otherwise processing electronic records, and includes a telephone system.”.

9. Section 41 of the Act is amended—

Section 41 amended

(a) in subsection (3)—

- (i) in the chapeau, by deleting the words “section 37, 38, 39 or 40” and substituting the words “section 37, 38 or 39”;
- (ii) by deleting the words “; and” at the end of paragraph (b) and substituting a full stop; and
- (iii) by deleting paragraph (c).

(b) by repealing subsection (5).

10. Section 43 of the Act is amended—

Section 43 amended

(a) in subsection (2)(a), by deleting the words “such one or more of the persons concerned as mentioned in section 41(3)(c)”; and

(b) in subsection (3)—

- (i) in paragraph (a) by deleting the words “40(1)” and substituting the word “40”; and
- (ii) in paragraph (c) by deleting the words “40(1)” and substituting the word “40”.

First Schedule
inserted

11. The Act is amended in Part VII, by deleting the words “(Repealed by Act No. 28 of 1996).”, occurring after the words “FIRST SCHEDULE” and substituting the following:

“(Section 12H)

(This Form applies where the suspect does not have a representative present)

REPUBLIC OF TRINIDAD AND TOBAGO

CERTIFICATION BY THE JUSTICE OF THE PEACE
OF CONDUCT OF IDENTIFICATION PROCEDURE

WHEREAS the suspect (NAME OF SUSPECT) was on the day of, 20..... asked to consent to participate in an identification procedure namely:

- (a) identification using video medium
- (b) identification parade
- (c) identification in a public place with the consent of the suspect
- (d) identification in a public place without the consent of the suspect
- (e) identification by confrontation

And whereas I, Justice of the Peace for the County of..... was present during the conduct of the identification procedure, I hereby certify that:

- (a) the suspect was informed of his rights under section 12F, including the right to have a representative present during the identification procedure;
- (b) the suspect was cautioned; and
- (c) the suspect gave his consent to participate in the identification procedure.

And whereas the suspect was given at least 9 hours’ notice of when the identification procedure is to be conducted, I also hereby certify that—

- (a) the time period for the representative of the suspect to be present has expired;
- (b) the suspect elected not to have a representative present during the identification procedure;
- (c) the identification officer discharged his functions under section 12F; Yes No ; and
- (d) where the identification officer failed to discharge his functions under section 12F, I notified the suspect of this failure.

And I also hereby certify the following:

- (a) objections/statements, if any, made by the suspect during the identification procedure—
- (b) unusual occurrences, if any, during the identification procedure—

(Signed)

.....
Justice of the Peace

12. The Act is amended in the Second Schedule— Second Schedule amended

(a) by inserting in Column I, above the reference to “(Inland Revenue Department)” the words “Financial Intelligence Unit of Trinidad and Tobago”; and

(b) by inserting in Column II, above the reference to “Commissioner of Inland Revenue” the word “Director”.

Passed in the Senate this day of , 2020.

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

I confirm the above.

Speaker

No. 7 of 2020

FIRST SESSION
TWELFTH PARLIAMENT
REPUBLIC OF
TRINIDAD AND TOBAGO

BILL

AN ACT to amend the Evidence Act,
Chap. 7:02

Received and read the

First time

Second time

Third time
