

**2016-03-16**

**OBJECTS AND REASONS**

This Bill would amend the *Magistrate's Courts Act*, Cap. 116A to

- (a) make better provision for committal proceedings under the Act by requiring the general use of written statements rather than the general use of oral evidence and depositions; and
- (b) provide for related matters.

*Arrangement of Sections*

1. Short title
2. Amendment of section 2 of Cap. 116A
3. Amendment of section 17 of Cap. 116A
4. Insertion of section 17A into Cap. 116A
5. Insertion of sections 18A, 18B, 18C, 18D, 18E, 18F, and 18G into Cap. 116A
6. Amendment of section 19 of Cap. 116A
7. Amendment of section 20 of Cap. 116A
8. Amendment of section 21 of Cap. 116A
9. Amendment of section 23 of Cap. 116A
10. Amendment of section 30 of Cap. 116A
11. Amendment of section 55 of Cap. 116A
12. Repeal of section 132 of Cap. 116A
13. Amendment of section 136 of Cap. 116A
14. Transitional Provision

- 15.** Amendment of the enactments in the Schedule
- 16.** Commencement

SCHEDULE

*Enactments to be Amended*



## **BARBADOS**

A Bill entitled

An Act to amend the *Magistrate's Courts Act*.

ENACTED by the Parliament of Barbados as follows:

### **Short title**

- 1.** This Act may be cited as the *Magistrate's Courts (Amendment) Act, 2016*.

**Amendment of section 2 of Cap. 116A**

**2.** *The Magistrate’s Court Act, in this Act referred to as the principal Act, is amended by*

(a) *deleting the definition of “committal proceedings” and substituting the following definition:*

“ “committal proceedings” means proceedings held before an examining magistrate to consider whether a *prima facie* case has been established for the committal of a person accused of an indictable offence for the trial of that offence by the High Court;”; and

(b) *inserting the following definitions in the appropriate alphabetical order:*

“ “accused” or “accused person” means a person who has been accused, arrested and brought before a magistrate or person who has been charged with an offence;

“examining magistrate” means a magistrate assigned to preside over committal proceedings under this Act; and

“Registrar” has the meaning assigned to it by section 2 of the *Supreme Court of Judicature Act, Cap. 117A;*”.

**Amendment of section 17 of Cap. 116A**

**3.** *The principal Act is amended by deleting section 17 and substituting the following:*

**“General nature of committal proceedings**

**17.(1)** An examining magistrate shall sit in open court while presiding over committal proceedings, to consider whether a *prima facie* case has been established for the committal of a person accused of an indictable offence for the trial of that offence by the High Court, except where

- (a) an enactment contains an express provision to the contrary; or
- (b) it appears to him that in respect of the whole or any part of the committal proceedings that the ends of justice would not be served by his sitting in open court.

(2) Committal proceedings and any determination made in committal proceedings by an examining magistrate shall be given in the presence of the accused person, but the examining magistrate may allow the committal proceedings to proceed or be completed in the absence of the accused person if

- (a) he considers that by reason of the disorderly conduct of the accused person before him it is not practicable for the evidence to be given in the presence of that accused person;
- (b) he considers it necessary for the purposes of receiving oral evidence in a matter to which section 133 applies; or
- (c) the accused person cannot be present for reasons of health, but is represented by an attorney-at-law and has consented in writing to the evidence being given in his absence.

(3) In this Part,

“High Court” means the Criminal Division of the High Court.”.

**Insertion of section 17A into Cap. 116A****4.        *The principal Act is amended by inserting the following new section after section 17:*****“Submission of evidence in committal proceedings**

**17A.(1)** Subject to section 18B, for the purposes of committal proceedings, evidence with or without exhibits, before an examining magistrate shall consist of written statements, whether for the prosecution or the defence, and these written statements shall be admissible as evidence in the same manner as oral evidence given by a person where the written statement

- (a) is prepared from a statement which was recorded, whether in writing or by electronic means, by a senior member of the Royal Barbados Police Force not below the rank of Sergeant or an attorney-at-law;
  - (b) purports to be signed by the person who made it;
  - (c) contains a declaration or statement by the person who made it, stating that the written statement is true to the best of his knowledge and belief; and
  - (d) contains a declaration by the person who made it stating that he made the written statement knowing that, if it were tendered in evidence, he would be liable to prosecution if he wilfully stated in it anything which he knew to be false or did not believe to be true.
- (2) Where a written statement to which subsection (1) applies
- (a) is made by a person under the age of 18, it shall state or give the age of that person;



- (b) is made by the accused person, it shall contain a declaration or statement stating that he made the written statement knowing that, if it were tendered in evidence, he may be liable to be committed for prosecution by the High Court;
  - (c) is made by a person who cannot read, it shall be read to him before he signs it, and that written statement shall be accompanied by a declaration by the person who read the written statement, and that declaration shall state that the written statement was read to the person who made the written statement; or
  - (d) makes reference to any other document as an exhibit, the copy of the written statement given to the examining magistrate or to any other party to the proceedings under subsection (3), must be accompanied by a copy of that document or by such information as may be necessary in order to enable the party to whom it is given to inspect that document or a copy thereof.
- (3) Before a written statement tendered in evidence in accordance with subsection (1) is used in committal proceedings, an examining magistrate shall ensure that
  - (a) a copy of the written statement is given, by or on behalf of the party proposing to tender it, to each of the other parties to the committal proceedings; and
  - (b) none of the other parties object to the written statement being tendered in evidence under this section.
- (4) Any document or object referred to as an exhibit and identified in a written statement tendered in evidence under this section shall be treated as if it had been produced as an exhibit and identified in court by the maker of the written statement.
- (5) Notwithstanding subsection (1), nothing shall prevent the accused person or his attorney-at-law from making a submission to the

examining magistrate that the evidence is not sufficient to commit the accused person to the High Court for the trial of the alleged indictable offence, and if any such submission is made, the same shall be taken into consideration by the examining magistrate for the purposes of section 19, and where a person is not represented by an attorney-at-law the examining magistrate shall inform the accused of his right under this subsection.

(6) For the purposes of this Part, section 25 of the *Criminal Procedure Act*, Cap. 127 applies to any written statement tendered in evidence in committal proceedings, as it applies to a deposition taken in such proceedings, but in its application to any such written statement that section has effect as if the words “and where it is also proved that such a deposition was taken in the presence of the person so accused and that he or his attorney-at-law had a full opportunity of cross-examining the witness, then if such a deposition purports to be signed by the magistrate by or before whom the same purports to have been taken” were omitted therefrom.

(7) For the purposes of this Part, section 4(3) of the *Criminal Procedure Act*, Cap. 127 applies to the facts disclosed in any written statement as it would apply to facts disclosed in a deposition.

(8) A person whose written statement is tendered in evidence under this section shall be treated for the purposes of section 30 as a witness who has been examined by the examining magistrate.”.

**Insertion of sections 18A, 18B, 18C, 18D, 18E, 18F, and 18G into Cap. 116A**

**5.** *The principal Act is amended by inserting the following new sections after section 18:*

**“Oral evidence from persons other than the accused**

**18A.(1)** Notwithstanding section 17A, an examining magistrate may

- (a) after considering the written statements;
- (b) on application by the accused person;
- (c) on application by any other party to the committal proceedings; or
- (d) upon hearing a submission by the accused made in accordance with section 18B or otherwise

authorise or require the giving or taking of oral evidence at the committal proceedings from any person other than the accused, whether or not a written statement from that person has been tendered in evidence, if he is satisfied that oral evidence from that person is necessary in the circumstances of the case in order for a determination to be made for the purposes of section 19.

(2) Where any person, other than the accused person, gives oral evidence in committal proceedings before an examining magistrate that oral evidence, given under oath, may be subject to cross-examination.

(3) Oral evidence given under this section shall be recorded, whether in writing or by electronic means, and the deposition prepared from the oral evidence shall be read over to the person giving the oral evidence and signed by him and signed by the examining magistrate.

(4) Where the accused is not represented by an attorney-at-law, the examining magistrate shall inform the accused of his right under subsection (1).

(5) Where an application is made under subsection (1) by a party other than the accused, and the accused is not represented by an attorney-at-law or the circumstances of the committal proceedings make it necessary, before making a determination to authorise the

taking of oral evidence pursuant to subsection (1), the examining magistrate shall inform the accused of his right to also make a submission under subsection (1) and of the benefits of making such an application.

(6) Where an examining magistrate pursuant to subsection (1), needs to hear oral evidence from any person he may issue a summons or a warrant, as the case may be, to cause that person to attend before him to give oral evidence in the committal proceedings.

### **Evidence of the Accused**

**18B.(1)** An accused person may at his option

- (a) tender in evidence his own written statement;
- (b) elect to make an unsworn statement;
- (c) give oral evidence; or
- (d) remain silent.

(2) Where an accused person elects to give oral evidence pursuant to subsection (1) the examining magistrate shall, before taking that oral evidence, caution the accused person in the words set out in rule 22(2) of the *Magistrate's Courts (Criminal Procedure) Rules, 2001* (S.I. 2001 No. 98) or with words of like effect.

(3) Oral evidence given by the accused person pursuant to subsection (1) shall be

- (a) recorded, whether in writing or by electronic means;
- (b) read over to the accused person;
- (c) signed by the accused person and signed by the examining magistrate;
- (d) kept with the written statements, or depositions, if any, of the witnesses; and

(e) transmitted in accordance with section 23 to the Director of Public Prosecutions,

and may, upon the trial of the accused person, be admitted in evidence without further proof thereof.

(4) Where the accused person elects not to give oral evidence or not to tender a written statement he or his attorney-at-law shall, at the commencement of the proceedings, notify the examining magistrate, the prosecution and any other party to the committal proceedings, whether in writing or otherwise, of this election.

**Copies of statements to be served on other parties to the committal proceedings**

**18C.(1)** For the purposes of committal proceedings, the prosecution shall make available to all other parties to a committal proceedings copies of the written statements or any other documents which are intended for consideration at the committal proceedings for the offence.

(2) For the purposes of committal proceedings, the accused person may make available to the prosecution or to any other party to a committal proceedings such written statements or other documents as the accused person intends to use for consideration at the committal proceedings for the offence.

(3) Subject to subsection (4), written statements or other documents referred to in subsection (1) or (2) shall be served on a party referred to in subsections (1) or (2) not less than 7 clear days before the sitting of the examining magistrate at the committal proceedings, or any adjournment thereof, for which those written statements or documents are to be considered.

- (4) An examining magistrate may
- (a) in his discretion, as regards any written statement or document to be considered in committal proceedings, vary the time stated or given by subsection (3); or
  - (b) on the application of any party to the committal proceedings, where he is satisfied that the party making the application has not had adequate time to consider the written statements or documents, adjourn the committal proceedings for such a period of time as he considers appropriate in the circumstances.

**Signing of statements by examining magistrate**

**18D.** The examining magistrate presiding over committal proceedings shall sign

- (a) every written statement tendered to the court or deposition made by the court; and
- (b) every document tendered as an exhibit.

**Witness Statements and the trial of the accused**

**18E.(1)** At the trial of an accused person, pursuant to any committal proceedings, and subject to section 17A, a written statement by any person is admissible as evidence to the like extent as oral evidence or a deposition made by the person for the purposes of a trial or otherwise.

(2) At the trial of an accused person, if the court is satisfied that any person whose written statement has been admitted in evidence or whose deposition has been taken in the committal proceedings

- (a) is dead;
- (b) is unfit, by reason of his bodily or mental condition, to attend trial;

- (c) is outside of Barbados and it is not reasonably practicable to secure his attendance;
- (d) cannot be found after all reasonable steps have been taken to find him; or
- (e) is kept away from the trial by threat of bodily harm or death

then the written statement or deposition signed, or purported to be signed, by the examining magistrate who presided over the committal proceedings, and any documentary exhibit relevant thereto, as the case may be, shall unless the court determines otherwise, be admissible at the trial as evidence of any fact without further proof that it was in fact signed by the examining magistrate purporting to have signed it.

#### **Warning in respect of an alibi**

**18F.(1)** Where the examination of the witnesses called on behalf of the prosecution has been completed, and before any presentation by the accused person, where he so elects, the examining magistrate shall address the accused person in the words set out in rule 22(4) of the *Magistrates' Courts (Criminal Procedure) Rules, 2001* (S.I. 2001 No. 98) or with words of like effect.

(2) The examining magistrate shall not be required to give the warning in subsection (1) in any case where it appears to him, having regard to the nature of the offence with which the accused person is charged, that it is unnecessary to do so.

(3) Where the examining magistrate has given the accused person the warning required by subsection (1), the examining magistrate shall explain the provisions of section 18G to the accused and where the accused person seeks leave to file the notice of the defence of an alibi in accordance with section 18G, the examining magistrate shall ensure that the accused person understands the meaning of the terms "7 clear days" and "alibi", as well as the provisions of section 18G(2).

**Notice of the Defence of an Alibi**

**18G.(1)** An accused person who intends to proffer an alibi as his defence at the trial of the offence shall give notice of the defence of an alibi at the committal proceedings for that offence, and where the accused person does not give notice of the defence of an alibi he shall not be permitted to raise that defence at the trial for that offence.

(2) A notice of the defence of an alibi referred to in subsection (1) shall include:

- (a) the name and address of the witness, or, if the name or address is not known to the accused at the time he gives the notice, any information in his possession which might be of material assistance in finding the witness; and
- (b) details of the alibi, such as the date, time, location, and specific information showing that the accused person was at a place or number of places at the time of the commission of the offence.

(3) Without prejudice to subsection (1), the accused person may with leave from the examining magistrate file notice of the defence of an alibi within 7 clear days from the end of the committal proceedings, and where the accused person is granted leave to file a notice of the defence of an alibi, that notice of the defence of an alibi shall be forwarded to

- (a) the examining magistrate; and
- (b) the Director of Public Prosecutions.

(4) In this section,

“notice of the defence of an alibi” means evidence tending to show that by reason of the presence of the accused person at a particular place or in a particular area at a particular time that he was not, or was



unlikely to have been, at the place where the offence is alleged to have been committed at the time of its alleged commission.”.

**Amendment of section 19 of Cap. 116A**

**6.** *The principal Act is amended by deleting section 19 and substituting the following:*

**“Discharge or committal for trial by examining magistrate**

**19.(1)** An examining magistrate shall, after the examination and consideration of the written or oral statements, including any written or oral statement of the accused person, as well as any exhibits or any other evidence presented to him, make a determination in respect of the committal proceedings and he may

- (a) where he is of the opinion, that there is sufficient evidence to put the accused person on trial by jury for an indictable offence, commit the accused person for trial at the next sitting of the High Court; or
- (b) where he is of the opinion, that there is insufficient evidence to put the accused person on trial by jury for an indictable offence, and the accused is in custody for no other cause than the offence under his consideration, discharge him.

(2) Subject to section 5 of the *Bail Act*, Cap. 122A, an examining magistrate may commit an accused person for trial

- (a) by committing him to custody, to be safely kept until delivered by due course of law for trial; or
- (b) by granting him bail and directing him to appear before the High Court for trial, but where his release on bail is

conditional on his providing one or more sureties, the examining magistrate shall

- (i) in accordance with section 14 of the *Bail Act*, Cap. 122A fix the amount in which a surety is to be bound with a view to his entering into his recognizance in accordance with subsections (2), (3), (4) and (5) of section 14 of the *Bail Act*, Cap. 122A; and
- (ii) commit the accused to custody in accordance with paragraph (a) until the conditions of his bail are met.

(3) Where the examining magistrate has committed a person to custody in accordance with paragraph (a) of subsection (2), the examining magistrate may where that person is in custody for no other cause, at any time before the first sitting of the High Court at which he is to be tried, grant him bail in accordance with the *Bail Act*, Cap. 122A subject to a duty to appear before the High Court for trial.”.

**Amendment of section 20 of Cap. 116A**

**7.** *The principal Act is amended by deleting section 20 and substituting the following:*

**“Bail and the accused person after the committal proceedings**

**20.** Notwithstanding paragraph (a) of section 19(2), an accused person may make such applications as may be permitted in accordance with the provisions *Bail Act*, Cap. 122A, at any time before the first sitting of the High Court at which he is to be tried. ”.

**Amendment of section 21 of Cap. 116A**

**8.** *The principal Act is amended by deleting section 21 and substituting the following:*

**“Committal for sentence**

**21.** Except where the charge is one of high treason, treason or murder, where an accused person in any written or oral statement made to the examining magistrate says or admits that he is guilty of the charge, then the examining magistrate shall commit him for sentence, and, as the case may be, subsections (2) and (3) of section 19 shall apply.”.

**Amendment of section 23 of Cap. 116A**

**9.** *The principal Act is amended by deleting section 23 and substituting the following:*

**“Written Statements to be sent to the Director of Public Prosecution and Registrar**

**23.** An examining magistrate who commits an accused person for trial or sentence shall, within 14 clear days after the end of the committal proceedings, transmit to the Director of Public Prosecutions and the Registrar the written statements, depositions or exhibits tendered under sections 17A, 18A or 18B in addition to any other relevant or prescribed documents.”.

**Amendment of section 30 of Cap. 116A**

**10.** *The principal Act is amended by deleting section 30 and substituting the following:*

**“Binding over to attend trial**

**30.(1)** The examining magistrate shall bind each witness whose written statements were tendered in committal proceedings, whether or not that person was examined before him, other than the accused person and any witness merely to the character of the accused, by a recognizance to attend and give evidence before the High Court and he shall bind the prosecutor by a recognizance to prosecute the accused before that Court.

(2) Where it appears to the examining magistrate, after taking into account any representations made by the accused person or prosecutor, that the attendance at the High Court of any witness examined before him is unnecessary by reason of any written statement or statement by the accused person or of the accused person having admitted before the examining magistrate the truth of the charge or of the evidence of the witness being merely formal, the examining magistrate shall

- (a) if the witness has not already been bound over, bind him over to attend the High Court conditionally, that is to say, on notice being given to him and not otherwise;
- (b) if the witness has already been bound over, direct that he shall be treated as having been bound over to attend the trial conditionally as aforesaid.

(3) An examining magistrate on committing any accused person for trial shall inform him of his right to require the attendance at the trial of any witness bound over, or treated as bound over conditionally, and of the steps that he must take for enforcing the attendance.

(4) Where any witness, on being required to enter into a recognizance under this section, refuses to do so, the examining magistrate may commit him to custody until after the trial of the accused person or until he sooner enters into the recognizance; but where the examining

magistrate does not commit the accused person for trial or sentence he shall release the witness.”.

**Amendment of section 55 of Cap. 116A**

**11.** *The principal Act is amended by deleting section 55 and substituting the following:*

**“Committal proceedings and evidence in a summary trial**

**55.** Where under section 52(3) or (7) a magistrate, having begun to inquire into an information as an examining magistrate, proceeds to try the information summarily, then, subject to sections 17A, 18A, 18B and 133(3), any evidence already given before the magistrate, as written statements or otherwise, shall be deemed to have been given in and for the purposes of the summary trial. ”.

**Repeal of section 132 of Cap. 116A**

**12.** *Section 132 of the principal Act is repealed.*

**Amendment of section 136 of Cap. 116A**

**13.** *Section 136 of the principal Act is amended by deleting the words “ under section 132” where they appear and substituting the words “under sections 17A or 18B ,”.*

**Transitional Provision**

**14.(1)** Subject to subsection (2), this Act shall apply to committal proceedings for indictable offences committed after the commencement date.

(2) From the commencement date, committal proceedings for an existing charge shall only be conducted in accordance with the provisions of this Act

where at or after the commencement date the committal proceedings for the existing charge has not commenced.

(3) An accused person for whom committal proceedings have commenced prior to the commencement date may, in respect of an existing charge, make an application to the examining magistrate for those committal proceedings to be continued in accordance with the provisions of this Act.

(4) Where an application under subsection (3) is granted by the examining magistrate any written statements made prior to the commencement date shall be treated as written statements which were made in accordance with sections 17A, 18A or 18B, as the case may be.

(5) Where the accused person does not make a written submission in accordance with subsection (3) the provisions of this Act shall not apply to the committal proceedings in respect of that accused person.

(6) In this section,

“commencement date” means the date on which this Act comes into operation;

“existing charge” means a charge for an indictable offence which has been laid against an accused person prior to the commencement date.

#### **Amendment of the enactments in the Schedule**

**15.** *The enactments set out in Column 1 of the Schedule are amended in the manner specified opposite thereto in Column 2 of the Schedule.*

#### **Commencement**

**16.** This Act shall come into operation on a date to be fixed by Proclamation.

## SCHEDULE

*(Section 15)*

## Amendments to enactments in the Schedule

| Column 1   | Column 2   |
|--|--|
| <i>Enactments</i>                                  | <i>Amendments</i>  |
| <i>Community Legal Services Act,<br/>Cap. 112A</i> | <p>Section 17 is deleted and the following is substituted:</p> <p>"Application for legal aid certificate by person charged</p> <p>17. Notwithstanding anything contained in this Act or the regulations, but subject to section 20, an application for a legal aid certificate may be made by or on behalf of a person charged with a scheduled offence to</p> <ul style="list-style-type: none"> <li>(a) a magistrate before whom, and at such time as, he is charged or may appear upon remand;</li> <li>(b) the examining magistrate by whom the committal proceedings in relation to that offence is held; <ul style="list-style-type: none"> <li>(i) at the commencement of the committal proceedings; or</li> <li>(ii) where the person charged is committed for trial, at the conclusion of the committal proceedings;</li> </ul> </li> <li>(c) a Judge at any time between committal for trial and the appearance of the person charged before the High Court to plead to the indictment; or</li> <li>(d) the trial Judge in relation to a certified offence at any time during the hearing." </li></ul> |

*Schedule - (Cont'd)*

## Amendments to enactments in the Schedule - (Cont'd)

| Column 1                               | Column 2  |
|--|---|
| <i>Enactments</i>                      | <i>Amendments</i>   |
| <i>Evidence Act, Cap. 121</i>          | <p>Section 156 is amended by deleting subsection (1) and substituting the following:</p> <p style="padding-left: 40px;">"(1) If any person in a written statement tendered in evidence in criminal proceedings under the <i>Magistrate's Court Act, Cap. 116A</i> or under section 158 of this Act wilfully makes a statement material in those proceedings which he knows to be false or does not believe to be true, he is liable on conviction on indictment to imprisonment for 2 years, a fine or to both."</p>  |
| <i>Geneva Conventions Act, Cap.17A</i> | <p>Section 7(2) is deleted and the following is substituted:</p> <p style="padding-left: 40px;">"(2) The notice referred to in subsection (1) must contain</p> <ul style="list-style-type: none"> <li>(a) a precise wording of the finding and sentence;</li> <li>(b) a summary of the committal proceedings; and</li> <li>(c) a copy of any order denying pardon or reprieve to the protected prisoner of war or protected internee, as the case may be." </li></ul>   |
| <i>Supreme Court Act, Cap. 117A</i>    | <p>Paragraph 1 of the <i>Second Schedule</i> is deleted and the following is substituted:</p> <p style="padding-left: 40px;">"Constitution of Rules Committee</p> <ol style="list-style-type: none"> <li>1. The Rules Committee consists of <ul style="list-style-type: none"> <li>(a) the Chief Justice, who shall be chairman;</li> <li>(b) the Justices of Appeal and the Judges;</li> <li>(c) the Master of the High Court;</li> <li>(d) the Solicitor-General;</li> <li>(e) the Chief Parliamentary Counsel;</li> <li>(f) the President of the Bar Association as defined in section 2 of the <i>Legal Profession Act, Cap. 370A</i>;</li> </ul> </li> </ol> |



*Schedule - (Concl'd)*

Amendments to enactments in the Schedule - (Concl'd)

| Column 1   | Column 2  |
|--|---|
| <i>Enactments</i>  | <i>Amendments</i>   |
| <p><i>Supreme Court Act, Cap. 117A</i><br/>(Concl'd)</p> | <p>(g) 3 attorneys-at-law nominated by the Council of the Bar Association and appointed by the Governor-General.</p> <p>2. The Rules Committee shall perform the functions conferred on that Committee by section 82, as well as such other functions as may be conferred by any other enactment."</p>  |
| <p><i>Theft Act, Cap. 155</i></p>                        | <p>Section 31 is amended by</p> <p>(a) deleting subsection (4) and substituting the following:</p> <p style="padding-left: 40px;">"(4) The court shall not exercise the powers conferred by this section unless in the opinion of the court the relevant facts sufficiently appear from evidence given at the trial or available documents, together with admission made by or on behalf of any person in connection with any proposed exercise of the powers."; and</p> <p>(b) inserting the following subsection after subsection (7):</p> <p style="padding-left: 40px;">"(8) For the purposes of this section,</p> <p style="padding-left: 80px;">"the available documents" means any written statements or admissions used in trial, where those written statements or admissions were admissible as evidence at the trial, as well as the written statements or any depositions taken in committal proceedings, and any other documentation or admissions used as evidence in the committal proceedings."</p> |

Read three times and passed the House of Assembly this  
day of \_\_\_\_\_, 2016.

**Speaker**

Read three times and passed the Senate this \_\_\_\_\_ day of  
, 2016.

**President**

## MAGISTRATE'S COURTS (AMENDMENT) ACT, 2016

### EXPLANATORY MEMORANDUM

This Bill would amend the *Magistrate's Courts Act*, Cap. 116A to make better provision for committal proceedings under the Act by requiring the general use of written statements rather than the general use of oral evidence and depositions, and to provide for related matters.

**Clause 1:** gives the citation of the amending Act; this the Act should be cited as the *Magistrate's Courts (Amendment) Act, 2016*.

**Clause 2:** amends the interpretation section of the Act to amend the definition of committal proceedings and to insert a definitions for examining magistrate, Registrar, and accused or accused person.

**Clause 3:** amends section 17 to make provision for any determination made by an examining magistrate to be given in the presence of the accused, but provides for certain instances in which a determination may be made in the absence of the accused. This section also defines High Court for the purposes of the this Part of the Act.

**Clause 4:** provides for the submission of evidence in committal proceedings to be by way of written statements, in addition it also provides for what must be done for a written statement to be accepted for use in committal proceedings.

**Clause 5:** inserts 7 new sections into the *Magistrates' Courts Act*, Cap. 116A. These sections will be discussed in turn:

**Clause 18A:** makes provision for the examining magistrate to take oral evidence where the taking of such evidence will assist the court in

making a determination in the matter and for any party to the committal proceedings to make an application for oral evidence to be taken.

**Clause 18B:** expressly retains certain options for the accused, in the interest of justice, this clause makes it clear that the accused need not give a written statement, oral evidence or an unsworn statement.

**Clause 18C** provides for the exchange of written statements prior to the commencement of committal proceedings and requires that this exchange should be done at least seven days before the commencement of the committal proceedings. This is to give adequate notice to facilitate preparation for the committal proceedings, and where adequate notice has not been given this clause provides for an application to be made for more time.

**Clause 18D:** provides for the examining magistrate to sign the written statements and the exhibits to ensure easy verification of the authenticity and integrity of the material which is to be transmitted for the trial of the offence.

**Clause 18E:** provides for the use of the written statements from the committal proceeding in the trial of the accused where the person making that written statement cannot be at the trial due to death, illness, threat or for other stated reasons.

**Clause 18F:** provides for the examining magistrate to give a warning of the requirement to give notice of the defence of an alibi and requires the examining magistrate to explain the consequences of not giving this notice of the defence of alibi. It also provides for the examining magistrate to ensure that the accused understands the terminology in clause 18G as well as options available to the accused in respect of the giving of the notice of the defence of alibi; and

**Clause 18G:** makes mandatory provision for the accused to give notice of the defence of alibi in order for the accused to be able to rely on the defence of alibi at the trial of the offence. This will assist in ensuring

that an accused person with a verifiable alibi does not waste judicial time or the financial resources of the public.

- Clause 6:** amends section 19 to makes provision for the examining magistrate to either discharge the accused or commit him for trial by the High Court on the basis of written statements and where the examining magistrate decides to commit the accused for trial he can either grant bail or commit him to custody until trial.
- Clause 7:** amends section 20 of the principal Act to provide for the accused who has been placed in custody under section 19(2) to make such further applications for bail as may be permitted under the *Bail Act, Cap. 122A*
- Clause 8:** amends section 21 to make provision for the use of written statements in instances where there is an admission of guilt, but this can only be used for offences other than the offence of murder, treason or high treason.
- Clause 9:** amends section 23 to provide the transmission of the written statements and the written record of depositions to the Director of Public Prosecutions and the Registrar of the Supreme Court.
- Clause 10:** amends section 30 of the Act to make provision for the use of written statements.
- Clause 11:** amends section 55 to provide for written statements used in a committal proceeding to be used in a summary trial where the committal proceedings are converted to a summary trial.
- Clause 12:** repeals section 132 as this section is no longer required in the new legislative scheme.

- Clause 13:** amends section 136 to make provision for the offence of perjury in respect of sections 17A or section 18B rather than under section 132, as section 132 is now repealed.
- Clause 14:** makes specific provision for the transition from the general use of depositions to the general use of written statements and for the provisions of this Act to automatically apply to committal proceedings which are slated to begin after the commencement of this Act. In the interest of fairness provision is also made for an accused to elect to have his committal proceedings subject to this Act in circumstances where those committal proceedings are already in process at the commencement of this Act.
- Clause 15:** amends other Acts which will be affected by the new regime for committal proceedings .
- Clause 16:** makes provision for this Act to commence on a date set by Proclamation, as this allows for the time which may necessary to make any administrative changes which may be required and also provides for the training of staff and attorneys-at-law.