

A BILL

ENTITLED

AN ACT to Abolish preliminary examinations and to provide for the procedure relating to committal for trial in cases of indictable offences, to be known as committal proceedings, and for matters incidental thereto.

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BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, and by the authority of the same, as follows:—

1. This Act may be cited as the Committal Proceedings Act, 2012, and shall come into operation on a day to be appointed by the Minister by notice published in the *Gazette*.

Short title and
commence-
ment.

Abolition of preliminary examinations and introduction of committal proceedings

2.—(1) Preliminary examinations of indictable offences are hereby abolished and, in lieu thereof, committal proceedings as provided in this Act shall be held by a Resident Magistrate sitting as an examining Justice in a Court of Petty Sessions.

(2) Reference in any enactment to “preliminary examination” or “preliminary enquiry” or other similar expression shall, unless the context otherwise requires, be construed as a reference to committal proceedings as provided in this Act.

Committal for trial on written statement.

3.—(1) Where an accused person charged with an indictable offence, appears or is brought before a Resident Magistrate and, pursuant to the Judicature (Resident Magistrates) Act, the Resident Magistrate makes an order that committal proceedings be held with a view to committal of that person to the Circuit Court for trial, the proceedings in relation thereto (in this Act referred to as “committal proceedings”) shall be conducted in accordance with this Act.

(2) Subject to subsection (3), committal proceedings may be conducted wholly on the basis of written statements submitted to the Resident Magistrate; and accordingly, if the Resident Magistrate is satisfied—

- (a) that all the evidence tendered (whether for the prosecution or the defence) in respect of the offence consists of written statements, with or without exhibits; and
- (b) that those statements comply with the requirements of section 6,

the Resident Magistrate may, after examining the written statements and exhibits (if any), commit the accused to stand trial or discharge him, as the case may be, in accordance with section 7.

(3) Nothing in subsection (2) shall prevent the accused person or his attorney-at-law from making a submission to the Resident Magistrate that the evidence is not sufficient to commit the accused to the Circuit Court for trial of an indictable offence and, if any such submission is made, the Resident Magistrate shall take it into consideration in determining whether or not to commit the accused for trial.

4.—(1) A Resident Magistrate may, in his discretion, authorize the taking of oral evidence at the committal proceedings from any person other than the accused if he is satisfied that (whether or not a statement from that person has been tendered in evidence) oral testimony from that person is necessary in the circumstances of the case in order for the Resident Magistrate to be able to make a decision under section 7.

Oral evidence from persons other than the accused.

(2) Where in any committal proceedings, any person other than the accused gives oral evidence before a Resident Magistrate then, subject to any enactment or rule of law authorizing the reception of unsworn evidence, any oral evidence given shall be under oath and shall be subject to cross-examination.

(3) Oral evidence given under this section shall be recorded in the form of a deposition in writing which shall be read over to the person giving the evidence and signed by him and by the Resident Magistrate.

(4) Where a Resident Magistrate is to hear oral evidence from any person pursuant to subsection (1), he may issue a summons or warrant, as the case may require, to cause that person to attend and give oral evidence in the committal proceedings.

5.—(1) An accused person may, at his option (whether or not he has furnished a written statement) elect to make an oral statement in the committal proceedings which statement may or may not be given under oath.

Oral evidence by accused.

(2) If an accused person elects to make an oral statement pursuant to subsection (1), the Resident Magistrate shall, before taking that statement, caution him in the words set out in the Appendix or words to the like effect.

Appendix.

(3) Any oral statement given by the accused pursuant to this section shall be —

- (a) recorded (whether in writing or by electronic means);
- (b) read over to the accused;

- (c) signed by the accused and by the Resident Magistrate;
- (d) kept with the statements and depositions (if any) of the witnesses; and
- (e) transmitted in accordance with section 11 to the Director of Public Prosecutions.

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

Requirements
for the
admissibility
of written
statements.

6.—(1) In committal proceedings a written statement by any person shall, if the conditions mentioned in subsections (2) and (3) are satisfied, be admissible as evidence to the like effect as oral evidence by that person.

(2) The conditions referred to in subsection (1) are as follows—

- (a) the statement has been recorded (whether in writing or by electronic means) by a member of the Jamaica Constabulary Force (hereinafter referred to as “the recorder”) in the presence of a Justice of the Peace or in the absence of a Justice of the Peace, a senior member of the Jamaica Constabulary Force not below the rank of Sergeant, and read over to the person who made it (hereinafter referred to as “the maker”); however, in the case of a person who is deaf or significantly hearing impaired, the statement may be communicated to the maker in any other effective manner;
- (b) the statement purports to be signed by the maker and the recorder in the presence of each other and in the presence of—
 - (i) the Justice of the Peace (and has been sworn to by the maker before the Justice of the Peace); or, as the case may be;
 - (ii) the senior member of the Jamaica Constabulary Force;

- (c) the statement contains a declaration by the maker to the effect that it is true to the best of his knowledge and belief and in the case of a person who has attained the age of fourteen years, that he made the statement knowing that, if it were tendered in evidence, he would be liable to prosecution if he willfully stated in it anything which he knew to be false or did not believe to be true; and
- (d) copies of the statement have been served on the parties to the proceedings in accordance with section 8.

(3) The following provisions shall also have effect in relation to any written statement tendered in evidence under this section—

- (a) the statement shall state whether it is made by a person who has attained the age of eighteen years, and if it is made by a person under the age of eighteen years, it shall state the age of that person;
- (b) if the statement is made by a person under the age of fourteen years, the Resident Magistrate shall receive evidence in the manner specified in paragraph (c), from a child psychiatrist, a probation officer, or any other person (hereinafter referred to as the "assessor") who the Resident Magistrate considers to be qualified to make an assessment of the child and who is not a party to the proceedings, in order that the Resident Magistrate may determine—
 - (i) whether the child understands the nature of an oath; and
 - (ii) if the child does not understand the nature of an oath, whether he possesses sufficient intelligence to justify the reception of the evidence and understands the duty of telling the truth;

- (c) evidence of the assessment of a child under paragraph (b) may be adduced by an oral examination of the assessor by the Resident Magistrate or by a written statement by the assessor submitted to the Resident Magistrate;
- (d) if the statement is made by a person who cannot read it, it shall be read to him or otherwise effectively communicated to him before he signs it or makes his mark, and shall be accompanied by a declaration that he has made the mark;
- (e) if the statement refers to any other document as an exhibit—
 - (i) a copy of that document shall be given to the other parties to the proceedings; or
 - (ii) such information as may be necessary shall be given in order to enable any other party to the proceedings to inspect that document and to obtain a copy thereof; and
- (f) if the statement refers to any exhibit which cannot conveniently be copied, the statement shall include information as to where the exhibit shall be available for inspection.

(4) A document or object referred to as an exhibit and identified in a written statement admitted in evidence under this section shall not be admissible as evidence in the committal proceedings unless—

- (a) subject to paragraph (b), it has been produced in court as an exhibit and marked as having been so produced and the accused person has had the opportunity of inspecting the exhibit; or
 - (b) in the case of an exhibit that cannot be conveniently produced in court, the parties have been served with notice of the location of the exhibit.
-

(5) A person whose written statement is under this section admitted in evidence in committal proceedings shall be treated for the purposes of sections 12 and 13 as a witness who has given evidence in those proceedings.

7. Where a Resident Magistrate, having examined all the evidence before him in any committal proceedings—

Powers of
Resident
Magistrate in
committal
proceedings.

- (a) is satisfied that the evidence against the accused is not sufficient to establish *prima facie* proof of the charge so that the accused ought not to be committed to stand trial for any indictable offence disclosed by the evidence, he shall discharge him; or
- (b) is satisfied that the evidence against the accused is sufficient to establish *prima facie* proof of the charge and that the accused ought to be committed for trial for an indictable offence, he shall remand the accused in custody, or admit him to bail, to stand trial for the offence charged or any other indictable offence disclosed by the evidence.

8. —(1) For the purposes of committal proceedings, steps shall be taken by the prosecution or the accused, as the case may be, to make available to any other party to the proceedings, copies of such statements or other documents as are intended to be considered at the committal proceedings in respect of the offence for which the accused is charged.

Copies of
statements to
be served on
other parties
to proceed-
ings.

(2) Subject to subsection (3), statements or other documents required by subsection (1) to be made available to any other party to the proceedings shall be served on that party not less than seven days before the sitting of the Resident Magistrate at the committal proceedings (or, as the case may be, any adjournment thereof) in which those statements or documents are to be considered.

(3) A Resident Magistrate may, in his discretion, as regards any statement or document to be considered in committal proceedings, vary the time prescribed by subsection (2); however, where on the application of any party to the proceedings, the

Resident Magistrate is satisfied that that party has not had adequate time to consider the statements or documents, he may adjourn the proceedings for such time as he considers appropriate.

Signing of
statements by
Magistrate.

9. Every written statement tendered to the court and every document tendered as an exhibit in committal proceedings in accordance with section 6, shall be signed by the Resident Magistrate presiding over those proceedings.

Transmission
and custody
of written
statements
and other
documentary
evidence taken
in committal
proceedings.

10.—(1) When a Resident Magistrate has committed an accused for trial for an indictable offence pursuant to section 7, the Resident Magistrate shall forthwith transmit to the Director of Public Prosecutions, the information or complaint, the written statements, the depositions, the documentary exhibits, copies of which have been given to the other parties to the proceedings pursuant to section 6(3)(e), the warrant of commitment for trial and any recognizance entered into.

(2) Unless the Resident Magistrate otherwise directs, the Police shall take charge of all other exhibits and shall produce them at the trial of the accused.

(3) The written statements, depositions and other documents received from the Resident Magistrate by the Director of Public Prosecutions shall be kept by him until the indictment (if any) to which they relate is filed, and shall then be transmitted to the proper officer of the court in which the accused is to be tried.

(4) A person committed for trial may be indicted not only for any offence for which he was committed for trial, but also (whether tried independently of or jointly with any such first-mentioned offence) for any offence which, in the opinion of the Director of Public Prosecutions, is disclosed by the evidence before the Resident Magistrate at the committal proceedings.

Admissibility
of written
statements
and
depositions as
evidence at
trial.

11.—(1) If at the trial of an accused person pursuant to any committal proceedings, 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 the trial;
- (c) is outside of Jamaica and it is not reasonably practicable to secure his attendance, including by means of a direction that a special measure shall apply;
- (d) cannot be found after all reasonable steps have been taken to find him; or
- (e) is kept away from the proceedings by threats of bodily harm,

then if the statement or deposition purports to be signed by the Resident Magistrate who presided over the committal proceedings, such statement or deposition 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 Resident Magistrate purporting to have signed it.

(2) In this section, "special measure" means any audiovisual live television link, video recording or any other measure other than direct oral evidence that may be available to the court, from time to time, for the adducing of evidence.

12. Where any person who has attained the age of fourteen years, in any written statement tendered in evidence in committal proceedings by virtue 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 shall be guilty of an offence and shall be liable upon summary conviction before a Resident Magistrate to a fine not exceeding three million dollars or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.

False evidence
in written
statements.

13.—(1) A Resident Magistrate conducting committal proceedings shall, in respect of each witness (other than the accused) who has given evidence in those proceedings, make an order (hereinafter referred to as a "witness order") requiring the witness to attend and give evidence before the court before which the accused is to be tried.

Witness
orders.

(2) Every witness order made pursuant to this section shall be served by a constable or an authorized person upon the person to whom it is directed, by delivering it to the person personally or, if he cannot be found, by leaving it with some person for him at his last or more usual place of abode; and the constable or authorized person who served it shall attend at the time and place, and before the court stated in the witness order, for the purpose of proving, if necessary, the service of such order.

(3) Any person who, without just cause, disobeys a witness order requiring him to attend before any court shall be guilty of contempt of that court and may be punished summarily by that court as if his contempt had been committed in the face of the court, so, however, that no person shall by reason of such disobedience be liable to imprisonment for a period exceeding three months.

(4) In this section, "authorized person" means a person authorized for the purpose by a Resident Magistrate.

Further
process to
secure
attendance.

14.—(1) If a Judge of the Supreme Court is satisfied by evidence on oath laid before him that a witness in respect of whom a witness order is in force is unlikely to comply with the order, the Judge may issue a warrant for the apprehension of the witness and for bringing him before the court before which he is required to attend.

(2) Where a witness who is required to attend before a court by virtue of a witness order fails to attend in compliance with such order, the court may—

- (a) cause to be served on him a notice requiring him to attend the court forthwith or at such time as may be specified in the notice; or
- (b) if the court is satisfied that there are reasonable grounds for believing that he has failed to attend without just cause, or if he has failed to comply with a notice under paragraph (a), issue a warrant for his arrest, and upon such arrest he shall be brought before the court.

(3) A witness brought before the court in pursuance of a warrant under this section may be remanded by that court in custody or be admitted to bail (with or without sureties) until such time as the court may appoint for receiving the evidence or dealing with him as provided under section 13(3).

(4) Where a witness attends a court in pursuance of a notice under this section, the court may direct that the notice shall have effect as if it required him to attend at any later time appointed by the court for receiving his evidence or dealing with him, as the case may be.

15.—(1) Any room or building in which a Resident Magistrate conducts committal proceedings shall, subject to subsections (2) and (3), be deemed an open court for that purpose.

Room where
committal
proceedings are
held deemed
open court.

(2) A Resident Magistrate may, where he considers it necessary or expedient in the interests of justice, exclude from the proceedings persons other than the parties thereto and their attorneys-at-law.

(3) Subsection (1) shall not apply in any case where, pursuant to any provision of law, the categories of persons who may be present during committal proceedings is restricted.

16.—(1) Until other provision is made pursuant to this Act, the forms set out in the Schedule to the Justices of the Peace Jurisdiction Act shall, where relevant, apply *mutatis mutandis* to the provisions of this Act as respects committal proceedings, in like manner as, immediately prior to the commencement of this Act, they applied to preliminary examinations.

Adaptation of
forms from
Justices of the
Peace
Jurisdiction
Act.

(2) The forms referred to in subsection (1), in their application to proceedings under this Act, may be adapted or modified to meet the varying circumstances of each case which may have arisen, or may arise, under this Act.

17. The Rules Committee of the Resident Magistrates' Courts may, subject to the approval of the Minister, make rules for carrying

Rules.

this Act into effect and, without prejudice to the generality of the foregoing, may make rules—

- (a) prescribing and regulating the use of forms required for the purposes of this Act, whether or not in substitution for forms referred to in section 16;
- (b) prescribing anything required to be prescribed pursuant to this Act; and
- (c) imposing and regulating the collection of fees in such circumstances as the Committee thinks fit.

Amendment to
Justices of the
Peace
Jurisdiction
Act.

18. The provisions of the Justices of the Peace Jurisdiction Act specified in the first column of the First Schedule to this Act are amended as specified in the second column of that Schedule.

Amendment to
various other
Acts.

19.—(1) The provisions of the Acts specified in the first column of the Second Schedule to this Act are amended in the manner respectively so specified in the second column of that Schedule.

(2) The Minister may, from time to time, by order subject to affirmative resolution, amend any other enactment to the extent necessary consequent on the provisions of this Act.

Minister may
vary fines.

20. The Minister may, by order subject to affirmative resolution, amend or vary any fine under this Act.

Review of Act.

21. This Act shall be reviewed, not later than three years after the coming into operation of this Act, by a Joint Select Committee of Parliament appointed for that purpose.

Transitional.

22. The provisions of this Act shall not have effect with respect to an offence for which an accused has been charged prior to the coming into operation of this Act; and any such offence shall be dealt with as if this Act had not been enacted.

APPENDIX

(Section 5 (2))

You are not obliged to say anything in answer to the charge unless you desire to do so; but whatever you say will be taken down in writing and may be given in evidence upon your trial.

FIRST SCHEDULE

(Section 19)

*Provisions of the Justices of the Peace Jurisdiction
Act repealed or amended*

Provisions of the Act	Amendment
Heading to Part II of the Act	Delete the words "Preliminary Examination" and substitute therefor the words "Committal Proceedings".
Section 29	<p>1. Delete the words "to answer to such charge or complaint, and to be further dealt with according to law" and substitute therefor the words "to be dealt with according to law".</p> <p>2. Delete from the first proviso the words "to answer to the said charge or complaint, and to be further dealt with according to law" and substitute therefor the words "to be dealt with according to law".</p>
Sections 31, 32 and 33	<p>1. Delete in each case all the words appearing immediately after the words "evidence adduced on the part of the prosecution".</p> <p>2. In section 32 delete the words "to answer to the said charge, and to be further dealt with according to law" and the words "to answer the charge in the said information and complaint mentioned, and to be further dealt with according to law" and substitute therefor in each case the words "to be dealt with according to law".</p> <p>3. In section 33 delete the words "to answer to the charge contained in the said information and to be further dealt with according to law" and substitute therefor the words "to be dealt with according to law".</p>
Sections 34 to 38 (inclusive)	Repeal.
Section 39(1)	Delete all the words appearing before the words "it shall be lawful" and substitute therefor the words "if, for any reasonable cause it becomes necessary or advisable to do so,".

Provisions of the Act

Amendment

Section 39 (2)

1. Delete the words "to defer the examination or further examination of an accused party" and substitute therefor the words "or desirable as aforesaid,".
2. Delete the words "until the day to be appointed for the examination or further examination,".
3. Delete all the words appearing after the words "it shall be lawful for the said Justice or Justices" and substitute therefor the words "to order accordingly".

Section 39 (3)

Delete the words "for continuing such examination".

Section 40

Repeal and substitute therefor the following—

"Appearance of accused in parish other than that where offence charged to have been committed.

40:—(1) Where a person appears, or is brought before a Justice in the parish in which that Justice has jurisdiction, charged with an offence alleged to have been committed by that person in any other parish the Justice or Justices shall act in accordance with subsection (2).

(2) The Justice shall examine such witnesses and receive such evidence as is produced before him in proof of the charge and if in his opinion the evidence is—

- (a) sufficient proof of the charge the Justice shall remand the accused person in custody or grant him bail in accordance with the Bail Act;

Provisions of the Act

Section 40, *contd.*

Amendment

(b) not sufficient to put the accused person upon trial for the offence charged then he shall—

(i) by warrant under his hand according to Form (24) in the First Schedule, order the accused person to be taken before the Justice in the parish where the offence is alleged to have been committed; and

(ii) at the same time deliver the information and complaint and any other relevant documents to the constable or other officer

Provisions of the Act

Amendment

Section 40, *contd.*

responsible
for the exe-
cution of
the warrant
to be
delivered
by him to
the Justice
referred to
in sub-
paragraph
(i)."

Section 41

Delete the words "after taking the examinations, in writing as aforesaid" and the words "with the examinations."

Sections 43 to
45 (inclusive)

Repeal.

Section 47

Delete the words "under Part II" wherever they appear and substitute therefor, in each case, the words "under the Committal Proceedings Act, 2012".

Section 63

Delete the words "under Part II" and substitute therefor the words "under the Committal Proceedings Act, 2012".

Section 64(1)

Delete the words "proceedings before examining Justices" and substitute therefor the words "committal proceedings".

Section 72

Delete the words "the examination or further examination" and substitute therefor the words "committal proceedings".

First Schedule

Part II

- | | |
|--------------|--|
| Form (16) | Delete the words "to answer unto the said charge, and to be further dealt with" and substitute therefor the words "to be dealt with". |
| Form (17) | Delete the words "to answer to the said charge, and to be further dealt with" and substitute therefor the words "to be dealt with". |
| Form (18) | Delete the words "to answer to the said charge, and to be further dealt with" and substitute therefor the words "to be dealt with". |
| Form (23)(a) | Delete the words "to answer further to the said charge, and to be further dealt with" and substitute therefor the words "to be dealt with". |
| Form (23)(b) | Delete the words "to answer (further) to the said charge, and to be further dealt with" and substitute therefor the words "to be dealt with". |
| Form (23)(c) | Delete the words "to answer further to the said charge made against you by C.D., and to be further dealt with" and substitute therefor the words "to be dealt with". |
| Form (24) | Delete the words "to answer further to the said charge, and to be further dealt with" and substitute therefor the words "to be dealt with". |
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SECOND SCHEDULE

(Section 20)

Enactment	Amendment
The Criminal Justice (Administration) Act	
Section 2	Delete from subsection (3) all the words appearing after the words "or evidence disclosed" and substitute therefor the words "in any written statements or depositions taken before a Resident Magistrate in committal proceedings and transmitted to such Court pursuant to the Committal Proceedings Act, 2012".
The Evidence Act Section 9	In paragraph (h) delete the words "section 36 of the Justices of the Peace Jurisdiction Act;" and substitute therefor the words "section 6 of the Committal Proceedings Act, 2012".
The Gun Court Act Section 5	Delete from paragraph (a) of subsection (1) the words "preliminary examination" and substitute therefor the words "committal proceedings under the Committal Proceedings Act, 2012".
Section 6	Delete from subsection (2) (a) (ii) and subsection (2) (b) the words "a preliminary examination" wherever they appear and substitute therefor in each case the words "committal proceedings".
Section 12	Delete from subsection (2) the words "preliminary examination" and substitute therefor the words "committal proceedings".
The Judicature (Resident Magistrates) Act Section 40	Delete the words "preliminary examinations" and substitute therefor the words "committal proceedings".
Section 64	1. Delete from the first paragraph the words "take all necessary and requisite preliminary

Enactment

Amendment

Section 272

examinations and depositions on" and substitute therefor the words "conduct all committal proceedings in respect of".

2. Delete from the marginal note the words "take all preliminary examinations of" and substitute therefor the words "conduct all committal proceedings re".

Section 274

Delete the words "a preliminary investigation shall be held" and substitute therefor the words "committal proceedings shall be held in accordance with the Committal Proceedings Act, 2012".

Delete the words "preliminary examinations" and substitute therefor the words "committal proceedings".

Section 276

1. Delete the words beginning with "begun to deal" and ending with "committal for trial" and substitute therefor the words "ordered that committal proceedings be held".

2. Delete from the section the words "a preliminary investigation" and substitute therefor the words "committal proceedings".

3. Delete all the words appearing after the words "need not be taken again"; and substitute therefor the words "but if the Magistrate thinks fit, or if the accused person so requires, every such witness shall be called or, as the case may be, recalled for examination and cross examination".

4. Delete from the marginal notes the words "preliminary investigation" wherever they appear and substitute therefor in each case the words "committal proceedings".

Section 279

Delete all the words beginning with "In any trial" and ending with "Justices of the Peace

Enactment

Amendment

Jurisdiction Act;" and substitute therefor the following words—

" In any trial of an indictment before a court or in any committal proceedings, the Magistrate shall have power of adjourning the trial or committal proceedings:".

Section 286

1. Delete the word "examination" and substitute therefor the words "committal proceedings".

2. Delete from the marginal note the words "on examination" and substitute therefor the words "for committal proceedings".

The Witnesses'
Expenses Act
Section 7

1. Delete the words "a preliminary enquiry is" and substitute therefor the words "committal proceedings are".

2. Delete the words "preliminary enquiry" and the word "enquiry" wherever they appear and substitute therefor in each case the word "proceedings".

3. Delete the marginal note and substitute therefor the words "Committal proceedings."

Section 8

1. Delete the words "preliminary enquiry" where they first appear and substitute therefor the words "committal proceedings".

2. Delete the words "preliminary enquiry was" and substitute therefor the words "committal proceedings were".

Section 16

1. Delete from paragraph (c) of subsection (2) the words "preliminary enquiries" and

Enactment

Amendment

substitute therefor the words "committal proceedings".

2. Delete from paragraph (d) of subsection (2) the words "preliminary examinations" and substitute therefor the words "committal proceedings".

MEMORANDUM OF OBJECTS AND REASONS

The existing provisions dealing with the holding of preliminary examinations to determine whether an accused person charged with an indictable offence should be committed for trial before a Circuit Court have been found to cause unnecessary delay and expense in bringing such proceedings to a conclusion.

This Bill seeks to introduce a new procedure to be called "committal proceedings" to replace preliminary examinations.

To reduce delay and expense, a person's written statement, if it satisfies certain conditions, will be admitted in committal proceedings as evidence to the same extent and effect as if such person had given oral evidence before the Resident Magistrate in the committal proceedings. On the basis of such evidence alone, a Resident Magistrate may, if satisfied that the accused person ought to be tried for an indictable offence, commit the accused to stand trial before a Circuit Court.

The Resident Magistrate in the committal proceedings has also been empowered to take oral evidence of a person other than the accused if he considers that, in the circumstances of the case, this should be done. He may also take an oral statement from the accused if the accused so wishes.

MARK J. GOLDING
Minister of Justice

ABILL

ENTITLED

AN ACT to Abolish preliminary examinations and to provide for the procedure relating to committal for trial in cases of indictable offences, to be known as committal proceedings, and for matters incidental thereto.

As introduced by the Honourable Minister of Justice.

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PROVISIONS OF THE JUSTICES OF THE PEACE JURISDICTION
ACT WHICH IT IS PROPOSED TO AMEND

PART II. *Preliminary Examinations*

Indictable Offences

29. In all cases where a charge or complaint (according to Form (15) in the First Schedule), shall be made before any one or more of Her Majesty's Justices of the Peace for any parish within this Island that any person has committed, or is suspected to have committed, any treason, felony, or indictable misdemeanour or other indictable offence whatsoever within the limits of the jurisdiction of such Justice or Justices or that any person guilty or suspected to be guilty of having committed any such crime or offence elsewhere out of the jurisdiction of such Justice or Justices, is residing or being, or is suspected to reside or be, within the limits of the jurisdiction of such Justice or Justices, then and in every such case, if the person so charged or complained against shall not then be in custody, it shall be lawful for such Justice or Justices to issue his or their warrant (according to Form (16) in the First Schedule), to apprehend such person, and to cause him to be brought before such Justice or Justices or any other Justice or Justices for the same parish, to answer to such charge or complaint, and to be further dealt with according to law:

Provided always, that in all cases it shall be lawful for such Justice or Justices to whom such charge or complaint shall be preferred, if he or they shall so think fit, instead of issuing in the first instance his or their warrant to apprehend the person so charged or complained against, to issue his or their summons (according to Form (17) in the First Schedule), directed to such person, requiring him to appear before the said Justice or Justices at a time and place to be therein mentioned, or before such other Justice or Justices of the said parish as may then be there; and if after being served with such summons in manner hereinafter mentioned, he shall fail to appear at such time and place in obedience to such summons, then and in every such case the said Justice or Justices, or any other Justice or Justices for the said parish, may issue his or their warrant (according to Form (18) in the First Schedule), to apprehend such person so charged or complained against and cause such person to be brought before him or them, or before some other Justice or Justices for the said parish, to answer to the said charge or complaint, and to be further dealt with according to law:

Provided, nevertheless, that nothing herein contained shall prevent any Justice or Justices from issuing the warrant hereinbefore first mentioned at any time before or after the time mentioned in such summons for the appearance of the said accused party.

31. In all cases where a charge or complaint for any indictable offence shall be made before such Justice or Justices as aforesaid, if it be intended to

issue a warrant in the first instance against the party or parties so charged, a written information and complaint thereof (according to Form (15) in the First Schedule), on the oath or affirmation of the informant, or of some witnesses in that behalf, shall be laid before such Justice or Justices:

Provided always, that in all cases where it is intended to issue a summons instead of a warrant in the first instance, it shall not be necessary that such information and complaint shall be in writing, or be sworn to or affirmed in manner aforesaid, but in every such case such information and complaint may be by parole merely, and without any oath or affirmation whatsoever to support or substantiate the same:

Provided also, that no objection shall be taken or allowed to any such information or complaint for any alleged defect therein in substance, or in form, or for any variance between it and the evidence adduced on the part of the prosecution, before the Justice or Justices who shall take the examination of the witnesses in that behalf as hereinafter mentioned.

32. Upon such information and complaint being so laid as aforesaid, the Justice or Justices receiving the same may, if he or they shall think fit, issue his or their summons or warrant respectively as, hereinbefore is directed, to cause the person charged as aforesaid to be and appear before him or them, or any other Justice or Justices for the said parish, to be dealt with according to law; and every such summons (according to Form (17) in the First Schedule) shall be directed to the party so charged in and by such information, and shall state shortly the matter of such information, and shall require the party to whom it is so directed to be and appear at a certain time and place therein mentioned before the Justice who shall issue such summons, or before such other Justice or Justices of the said parish as may then be there, to answer to the said charge, and to be further dealt with according to law; and every such summons shall be served by a constable or other peace officer upon the person to whom it is so directed, by delivering the same to the party personally, or, if he cannot conveniently be met with, then by leaving the same with some person for him at his last or most usual place of abode; and the constable or other peace officer who shall have served the same in manner aforesaid shall attend at the time and place, and before the Justices in the said summons mentioned, to depose, if necessary, to the service of such summons; and if the person so served shall not be and appear before the Justice or Justices at the time and place mentioned in such summons in obedience to the same, then it shall be lawful for such Justice or Justices to issue his or their warrant (according to Form (18) in the First Schedule), for apprehending the party so summoned, and bringing him before such Justice or Justices, or some other Justice or

Justices for the said parish, to answer the charge in the said information and complaint mentioned, and to be further dealt with according to law:

Provided always, that no objection shall be taken or allowed to any such summons or warrant for any alleged defect therein in substance or in form, or for any variance between it and the evidence adduced on the part of the prosecution before the Justice or Justices who shall take the examination of the witnesses in that behalf as hereinafter mentioned; but if any such variance shall appear to such Justice or Justices to be such that the party charged has been thereby deceived or misled, it shall be lawful for such Justice or Justices at the request of the party so charged, to adjourn the hearing of the case to some future day, and in the meantime to remand the party so charged, or admit him to bail in manner hereinafter mentioned.

33. Every warrant (according to Form (18) in the First Schedule) hereafter to be issued by any Justice or Justices to apprehend any person charged with any indictable offence shall be under the hand or hands of the Justice or Justices issuing the same, and may be directed either to any constable or other person by name, or generally to the constable of the parish within which the same is to be executed, without naming him; or to such constable, and all other constables or peace officers in the parish within which the Justice or Justices issuing such warrant has or have jurisdiction; or generally to all the constables or peace officers within such last mentioned parish; and it shall state shortly the offence on which it is founded, and shall name or otherwise describe the offender, and it shall order the person or persons to whom it is directed to apprehend the offender, and bring him before the Justice or Justices issuing the said warrant, or before some other Justice or Justices for the said parish, to answer to the charge contained in the said information, and to be further dealt with according to law; and it shall not be necessary to make such warrant returnable at any particular time, but the same may remain in force until it shall be executed.

Provided always, that no objection shall be taken or allowed to any such warrant for any defect therein in substance or in form, or for any variance between it and the evidence adduced on the part of the prosecution before the Justice or Justices who shall take the examinations of the witnesses in that behalf as hereinafter mentioned; but if any such variance shall appear to such Justice or Justices to be such that the party charged has been thereby deceived or misled, it shall be lawful for such Justice or Justices, at the request of the party so charged, to adjourn the hearing of the case to some future day, and in the meantime to remand the party so charged, or to admit him to bail in manner hereinafter mentioned.

PROVISIONS OF THE JUSTICES OF THE PEACE JURISDICTION
ACT WHICH IT IS PROPOSED TO REPEAL

34. In all cases where any person shall appear or be brought before any Justice or Justices charged with any indictable offence committed within this Island, or whether such person appear voluntarily upon summons, or have been apprehended with or without warrant, or be in custody for the same, or any other offence, such Justice or Justices, before he or they shall grant him bail in accordance with the Bail Act, shall, in the presence of such accused person who shall be at liberty to put questions to any witness produced against him, take the statement (according to Form (19) in the First Schedule) on oath or affirmation of those who shall know the facts and circumstances of the case, and shall put the same into writing; and such depositions shall be read over to, and signed respectively by, the witnesses who shall have been so examined, and shall be signed also by the Justice or Justices taking the same; and the Justice or Justices before whom any such witness shall appear to be examined as aforesaid shall, before such witness is examined, administer to such witness the usual oath or affirmation, which such Justice or Justices shall have full power and authority to do; and if upon the trial of the person so accused as first aforesaid, it shall be proved by the oath or affirmation of any credible witness that any person whose deposition shall have been taken as aforesaid is dead, or so ill as not to be able to travel or is absent from the Island or is not of competent understanding to give evidence by reason of his being insane, and if also it be proved that such deposition was taken in the presence of the person so accused, and that he, or his counsel or solicitor had a full opportunity of cross-examining the witness, then, if such deposition purport to be signed by the Justice by or before whom the same purports to have been taken, it shall be lawful to read such deposition as evidence in such prosecution, without further proof thereof, unless it shall be proved that such deposition was not in fact, signed by the Justice purporting to sign the same:

Provided, that no deposition of a person absent from the Island or insane shall be read in evidence under the powers of this section, save with the consent of the court before which the trial takes place.

35. The room or building in which such Justice or Justices shall take such examinations and statement as aforesaid shall not be deemed an open court for that purpose; and it shall be lawful for such Justice or Justices, in his or their discretion, to order that no person shall have access to, or be or remain in, such room or building, without the consent or permission of such Justice or

Justices, if it appear to him or them that the ends of justice will be best answered by so doing.

36. After the examinations of all the witnesses on the part of the prosecution as aforesaid shall have been completed, the Justice, or one of the Justices by or before whom such examination shall have been so completed as aforesaid, shall, without requiring the attendance of the witnesses, read, or cause to be read, to the accused the depositions taken against him, and shall say to him these words, or words to the like effect: "Having heard the evidence, do you wish to say anything in answer to the charge? You are not obliged to say anything unless you desire to do so; but whatever you say will be taken down in writing, and may be given in evidence against you upon your trial"; and whatever the prisoner shall then say in answer thereto shall be taken down in writing (according to Form (20) in the First Schedule), and read over to him, and shall be signed by the said Justice or Justices, and kept with the depositions of the witnesses, and shall be transmitted with them as hereinafter mentioned; and afterwards, upon the trial of the said accused person, the same may if necessary be given in evidence against him, without further proof thereof, unless it shall be proved that the Justice or Justices purporting to sign the same did not in fact sign the same:

Provided always, that the said Justice or Justices, before such accused person shall make any statement, shall state to him, and give him clearly to understand, that he has nothing to hope from any promise of favour, and nothing to fear from any threat, which may have been holden out to him to induce him to make any admission or confession of his guilt; but that whatever lie shall then say may be given in evidence against him upon his trial, notwithstanding such promise or threat:

Provided nevertheless, that nothing herein enacted or contained shall prevent the prosecutor in any case from giving in evidence any admission, or confession, or other statement of the person accused or charged, made at any time which by law would be admissible as evidence against such person.

37. In all cases, where any person shall appear or be brought before any Justice, charged with any indictable offence, such Justice, before he shall commit such accused person for trial, or grant him bail in accordance with the Bail Act, shall immediately after obeying the directions of section 36, ask such accused person whether he desires to call any witnesses, and if the accused person shall call any witnesses, such Justice shall, in the presence of such accused person, take the statement, on oath or affirmation, both examination and cross-examination, of those who shall be so called as witnesses by such accused person in the same way that the statements of the witnesses for the prosecution are taken; and such depositions of such witnesses, shall be read over to and signed respectively by the witnesses who shall have been so

examined, and shall be signed also by the Justice taking the same, and transmitted in due course of law in the same way as the depositions of the witnesses for the prosecution are read over, signed, and transmitted, and such witnesses, not being witnesses merely to the character of the accused, as shall, in the opinion of the Justice, give evidence in any way material to the case, shall be bound by recognizance to appear and give evidence at the said trial; and all the enactments in force relating to the depositions of witnesses for the prosecution shall extend and be applicable to the depositions of witnesses hereby directed to be taken.

38. It shall be lawful for the Justice or Justices before whom such witnesses shall be examined as aforesaid to bind by recognizance (in the Form (21) (a) of the First Schedule) the prosecutor and every such witness to appear at the next Circuit Court at which the accused is to be tried, then and there to prosecute, or to prosecute and give evidence, or to give evidence, as the case may be, against the party accused; which said recognizance shall particularly specify the profession, art, mystery, or trade of every such person entering into, or acknowledging the same, together with his Christian and surname, and the parish in which he resides; and the said recognizance, being duly acknowledged by the person so entering into the same, shall be subscribed by the Justice or Justices before whom the same shall be acknowledged, and a notice thereof (in the Form (21) (b) of the First Schedule), signed by the said Justice or Justices, shall at the same time be given to the person bound thereby; and the several recognizances so taken, together with the written information (if any), the depositions, the statement of the accused, and the recognizance of bail (if any) in every such case shall be delivered by the said Justice or Justices, or he or they shall cause the same to be delivered to the Director of Public Prosecutions and he to the proper officer of the court in which the trial is to be had, before or at the opening of the said court, on the first day of the sitting thereof, or at such other time as the Judge who is to preside in such court at the said trial shall order and appoint:

Provided always, that if any such witness shall refuse to enter into, or acknowledge such recognizance as aforesaid, it shall be lawful for such Justice or Justices, by his or their warrant (in the Form (22) (a) of the First Schedule) to commit him to prison there to be imprisoned and safely kept until after the trial of such accused party, unless, in the meantime, such witness shall duly enter into such recognizance as aforesaid before some one Justice for the parish in which such prison shall be situated:

Provided nevertheless, that if afterwards, from want of sufficient evidence in that behalf, or other cause, the Justice or Justices, before whom such accused party shall have been brought shall not commit him, or hold him to bail, for the offence with which he is charged, it shall be lawful for such Justice or Justices, or any other Justice or Justices of the same parish, by his or their order in that

behalf (in the Form (22) (b) of the First Schedule) to order and direct the Superintendent or other head officer of such prison where such witness shall be so in custody, to discharge him from the same; and such Superintendent or other head officer shall thereupon forthwith discharge him accordingly.

**PROVISIONS OF THE JUSTICES OF THE PEACE JURISDICTION
ACT WHICH IT IS PROPOSED TO AMEND**

39.—(1) If, from the absence of witnesses, or from any other reasonable cause, it shall become necessary or advisable to defer the examination, or further examination, of the witnesses for any time, it shall be lawful to and for the Justice or Justices before whom the accused shall appear or be brought, by his or their warrant (in the Form (23) (a) of the First Schedule) from time to time to remand the party accused, for such time as by such Justice or Justices in their discretion shall be deemed to be reasonable not exceeding eight clear days, to prison.

(2) In any case in which it becomes necessary to defer the examination or further examination of an accused party, and the Justice or Justices before whom such accused party appears or is brought is or are willing that such accused party, instead of being detained in custody until the day to be appointed for the examination or further examination, should be granted bail in accordance with the Bail Act, it shall be lawful for the said Justice, or Justices to defer the examination or further examination of the party accused for such time, not exceeding fourteen clear days, as to the said Justice or Justices may in their discretion be deemed reasonable.

(3) If the remand be for a time not exceeding three clear days, it shall be lawful for such Justice or Justices verbally to order the constable or other person in whose custody such party accused may then be, or any other constable or person to be named by the said Justice or Justices in that behalf, to continue or keep such party accused in his custody, and to bring him before the same or such other Justice or Justices as shall be there acting at the time appointed for continuing such examination:

Provided always, that any such Justice or Justices may order such accused party to be brought before him or them, or before any other Justice or Justices of the Peace, for the same parish, at any time before the expiration of the time for which such accused party shall be so remanded; and the Superintendent or other head officer in whose custody he shall then be shall duly obey such order:

Provided also, that instead of detaining the accused party in custody during the period for which he shall be so remanded, any one Justice before whom such accused party shall so appear or be brought as aforesaid may grant him bail in accordance with the Bail Act.

PROVISIONS OF THE JUSTICES OF THE PEACE JURISDICTION ACT
WHICH IT IS PROPOSED TO REPEAL AND REPLACE

40. Whenever a person shall appear, or shall be brought before a Justice or Justice's in the parish wherein such Justice or Justices shall have jurisdiction, charged with an offence alleged to have been committed by him in any parish within this Island, wherein such Justice or Justices shall not have jurisdiction, it shall be lawful for such Justice or Justices, and he and they are hereby required, to examine such witnesses, and receive such evidence in proof of such charge as shall be produced before him or them within his or their jurisdiction; and if, in his or their opinion, such testimony and evidence shall be sufficient proof of the charge made against such accused party, such Justice or Justices shall thereupon commit him to prison, or shall grant him bail in accordance with the Bail Act, and shall bind over the prosecutor (if he have appeared before him or them) and the witnesses by the recognizance accordingly, as in hereinbefore mentioned; but if such testimony and evidence shall not, in the opinion of such Justice or Justices, be sufficient to put the accused party upon his trial for the offence with which he is so charged, then such Justice or Justices shall bind over such witnesses as he shall have examined, by recognizance, to give evidence as hereinbefore is mentioned; and such Justice or Justices shall by warrant (according to Form (24) in the First Schedule) under his or their hand or hands, order such accused party to be taken before some Justice, or Justices in and for the parish where the offence is alleged to have been committed, and shall, at the same time, deliver the information and complaint, and also the depositions and recognizances so taken by him or them to the constable or other officer who shall have the execution of such last mentioned warrant, to be by him delivered to the Justice or Justices before whom he shall take the accused, in obedience to the said warrant; and which said depositions and recognizances shall be deemed to be taken in the case, and shall be treated, to all intents and purposes, as if they had been taken by or before the said last-mentioned Justice or Justices; and shall, together with such depositions and recognizances as such last-mentioned Justice or Justices shall take in the matter of such charge against the said accused party, be transmitted to the Director of Public Prosecutions and by him to the Clerk of the Court where the said accused party is to be tried, in the manner and at the time hereinbefore mentioned, if such accused party shall be committed for trial upon the said charge, or shall he granted bail:

Provided always, that if such last-mentioned Justice or Justices shall not think the evidence against such accused party sufficient to put him upon his trial and shall discharge him without holding him to bail, every such recognizance so taken by the said first-mentioned Justice or Justices as aforesaid shall be null and void.

PROVISIONS OF THE JUSTICES OF THE PEACE JURISDICTION
ACT WHICH IT IS PROPOSED TO AMEND

41. Where any person shall appear or be brought, before a Justice charged with any felony, or with any assault with intent to commit any felony, or with any attempt to commit any felony, or with obtaining or attempting to obtain property by false pretences, or with a misdemeanour in receiving property stolen or obtained by false pretences, or with perjury, or subornation of perjury, or with concealment of the birth of a child, or with wilful or indecent exposure of the person, or with riot, or with assault in pursuance of a conspiracy to raise wages, or assault upon a peace officer in the execution of his duty, or upon any person acting in his aid, or with neglect or breach of duty as a peace officer, or with any misdemeanour for the prosecution of which the costs may be allowed out of the public funds of this Island, such Justice may, in his discretion, grant bail to such person in accordance with the Bail Act; and thereupon such Justice shall take the recognizance (in the Form (25) (a) or (25) (b) of the First Schedule, as the case may be), of the said accused person and his surety or sureties conditioned for the appearance of such accused person at the time and place of trial, and that he will then surrender and take his trial, and not depart the court without leave; and in all cases where a person charged with any indictable offence shall be committed to prison to take his trial for the same, it shall be lawful at any time afterwards and before the first day of the sitting of the court at which he is to be tried, or before the day to which such court may be adjourned for the Justice or Justices who shall have signed the warrant for his commitment in his or their discretion, to grant him bail in manner aforesaid; or if such committing Justice or Justices shall be of opinion that for any of the offences hereinbefore mentioned the said accused person ought to be granted bail, he or they shall, in such cases, and in all other cases of misdemeanours, certify (in the Form (25) (c) of the First Schedule) on the back of the warrant of commitment his or their consent to such accused party being bailed, stating also the amount of bail which ought to be required, and it shall be lawful for any Justice attending or being at the prison where such accused party shall be in custody, on production of such certificate, to grant him bail in manner aforesaid; or if it shall be inconvenient for the surety or sureties in such a case to attend at such prison to join with such accused person in the recognizance of bail, then such committing Justice or Justices may make a duplicate of such certificate (according to the Form (25) (d) of the First Schedule), and, upon the same being produced to any Justice for the same parish, it shall be lawful for such last-mentioned Justice, to take the recognizance of the surety or sureties in conformity with such certificate; and upon such recognizance being transmitted to the Keeper of such prison, and produced, together with the certificate on the warrant of commitment as aforesaid, to any Justice attending or being at such prison, it shall be lawful

for such last-mentioned Justice thereupon to take the recognizance of such accused party, and to order him to be discharged out of custody as to that commitment, as hereinafter mentioned; and where any person shall be charged before any Justice with any indictable misdemeanour other than those hereinbefore mentioned, such Justice after taking the examinations in writing as aforesaid, instead of committing him to prison for such offence, shall grant him bail in manner aforesaid; or, if he has been committed to prison, and shall apply to any one of the Visiting Justices of such prison, or to any other Justice for the same parish, before the first day of the sitting of the court at which he is to be tried, or before the day to which such court may be adjourned, to be granted bail, such Justice shall accordingly grant him bail in manner aforesaid; and in all cases where such accused person in custody shall be granted bail by a Justice, other than the committing Justice or Justices as aforesaid, such Justice so granting him bail shall forthwith transmit the recognizance or recognizances of bail to the committing Justice, or Justices, or one of them, to be by him or them transmitted with the examinations, to the proper officer:

Provided nevertheless, that no Justice or Justices shall grant bail to any person for treason nor shall such person be granted bail, except by order of a Judge of the Supreme Court.

PROVISIONS OF THE JUSTICES OF THE PEACE JURISDICTION ACT WHICH IT IS PROPOSED TO REPEAL

43. When all the evidence offered upon the part of the prosecution against the accused party shall have been heard, if the Justice or Justices then present shall be of opinion that is not sufficient to put such accused party upon his trial for any indictable offence, such Justice or Justices shall forthwith order such accused party, if in custody, to be discharged as to the information then under inquiry; but if, in the opinion of such Justice or Justices, such evidence is sufficient to put the accused party upon his trial for an indictable offence, or if the evidence given raise a strong or probable presumption of the guilt of such accused party, then such Justice or Justices shall by his or their warrant (according to Form (26) (a) in the First Schedule), commit him to prison to be there safely kept until he shall be (hence delivered by due course of law, or grant him bail as hereinbefore mentioned.

44. The constable, or any of the constables, or other persons to whom the said warrant of commitment shall be directed, shall convey such accused person therein named or described to the prison mentioned in such warrant, and there deliver him, together with such warrant, to the Superintendent or other head officer of such prison, who shall thereupon give such constable or other person so delivering such prisoner into his custody, a receipt (according to Form.

(26) (b) in the First Schedule) for such prisoner, setting forth the stale and condition in which such prisoner was when he was delivered into the custody of such Superintendent or other head officer.

45. At any time after all the examinations aforesaid shall have been completed, and before the first, day of the sitting of the Circuit Court at which any person so committed to prison or admitted to bail as aforesaid is to be tried, such person may require, and shall be entitled to have, of and from the officer or person having the custody of the same, copies of the depositions on which he shall have been committed or bailed, on payment of a reasonable sum for the same, not exceeding at the rate of five dollars for each folio of one hundred and sixty words.

PROVISIONS OF THE JUSTICES OF THE PEACE JURISDICTION ACT WHICH IT IS PROPOSED TO AMEND

PART III. *General Provisions*

47. If it shall be made to appear to any justice by the oath or affirmation of any credible person that any person is likely to give material evidence on behalf of the prosecutor, or complainant, or defendant in proceedings under Part I or on behalf of the prosecution or defence under Part II, such Justice may, and is hereby required to issue his summons in the Form (27) or (28) of the First Schedule, as the case may require, to such person, under his hand, requiring him to be and appear at a time and place mentioned in such summons before such Justice or before such other Justice or Justices for the same parish as shall then be there to testify what he shall know concerning the matter of the information or complaint under Part I, or charge made against the accused party under Part II; and if such person so summoned shall neglect or refuse to appear at the time and place appointed by the said summons, and no just excuse shall be offered for such neglect or refusal, then (after proof upon oath or affirmation of such summons having been served upon such person either personally or by leaving the same for him with some person at his last, or most usual, place of abode; and—with regard to proceedings under Part I—that a reasonable sum was paid or tendered to him for his costs in that behalf), it shall be lawful for such Justice or Justices, before whom such person should have appeared, to issue a warrant in the Form (29) or (30) of the First Schedule, as the case may require, under his or their hands, to bring and have such person at a time and place to be therein mentioned, before the Justice who issued the said summons, or before such other Justice or Justices for the same parish as shall then be there, to testify as aforesaid; and which said warrant may be executed out of the jurisdiction of the Justice who shall have issued the same; or, if such Justice shall be satisfied by evidence upon oath or affirmation that

it is probable that such person will not attend to give evidence without being compelled so to do, then, instead of issuing such summons, it shall be lawful for him to issue his warrant in the Form (31) or (32) of the First Schedule, as the case may require, in the first instance; and if, on the appearance of such, person so summoned before the said last mentioned Justice or Justices, either in obedience to the said summons or upon being brought before him or them by virtue of the said warrant, such person shall refuse to be examined upon oath or affirmation, or shall refuse to take such oath or affirmation, or having taken such oath or affirmation shall refuse to answer such questions concerning the premises as shall then be put to him, without offering any just excuse for such refusal, any Justice then present, and having there jurisdiction may by warrant (in the Form (33) or (34) of the First Schedule, as the case may require) under his hand commit the person so refusing to prison there to remain and be imprisoned for any time not exceeding seven days, unless he shall, in the meantime consent to be examined and to answer concerning the premises:

Provided, however, that where the information or complaint is preferred by the police, and the witness is a witness summoned by them, it shall not be necessary before the issue of a warrant (in Form (29)) to prove that a reasonable sum was paid or tendered to him for his costs and expenses in that behalf.

63. In every summons of a witness, warrant to apprehend a witness who has not obeyed a summons, Warrant for a witness in the first instance, warrant of commitment of a witness for refusing to be sworn or to give evidence, recognizance to prosecute or give evidence, commitment of witness for refusing to enter into recognizance, warrant remanding a prisoner, recognizance of bail instead of remand on adjournment of examination, recognizance of bail, warrant of deliverance on bail being given for a prisoner already committed, or warrant of commitment issued in relation to proceedings under Part II, it shall be sufficient, instead of setting out at length the charge against the accused person (for that, etc., etc., as in the information), to state shortly the nature of the offence charged, including in such statement the name of the person against whom, and the date on which, such offence is charged to have been committed, as (larceny of the goods of *A.B.* on the day of , or the wilful murder of *C.D.* on the day of , or assaulting *E.F.* on the day of with intent to do grievous bodily harm).

64.—(1) Every information, complaint, summons, warrant or other document laid, issued or made for the purpose of or in connection with any proceedings before examining Justices or a court of summary jurisdiction for an offence, shall be sufficient if it contains a statement of the specific offence with which the accused person is charged, together with such particulars as may be necessary for giving reasonable information as to the nature of the charge.

(2) The statement of the offence shall describe the offence shortly in ordinary language avoiding as far as possible the use of technical terms, and without necessarily stating all the essential elements of the offence, and, if the offence charged is one created by statute, shall contain a reference to the section of the statute creating the offence.

72. Where any defendant or accused person shall have been discharged upon his entering into a recognizance conditioned for his appearance at the time and place to which the hearing of the case or the examination or further examination shall have been adjourned or deferred and shall not afterwards appear at the time and place in such recognizance mentioned, then the Justice who shall have taken the said recognizance, or any other Justice or Justices who may then be there present, may enforce the recognizance in accordance with the Recognizances and Sureties of the Peace Act.

FIRST SCHEDULE TO THE JUSTICES OF THE PEACE
JURISDICTION ACT WHICH IT IS PROPOSED TO AMEND

FORM (16)

Warrant to apprehend a Person charged with an Indictable Offence

To each and all of the Constables, of _____ and to all other
Peace Officers in the said parish of _____

Whereas, *A.B.* of _____ (labourer, etc.), hath this day been charged upon oath before the undersigned, (one) of Her Majesty's Justices of the Peace, in and for the said parish of _____ for that he, on _____, at _____, did

(etc. stating shortly the offence): These are therefore to command you, in Her Majesty's name forthwith, to apprehend the said *A.B.* and to bring him before (me) or some other of Her Majesty's Justices of the Peace, in and for the said parish, to answer unto the said charge, and to be further dealt with according to law.

Given under my hand, this _____ day of _____ 19____, at _____

in the parish aforesaid.

J.S.

FORM (17)

Summons to a Person charged with an Indictable Offence

To A.B., of _____, (labourer).

Whereas, you have this day been charged before the undersigned, (one) of Her Majesty's Justices of the Peace, in and for the said parish of _____, for that you, on _____, at _____, (*etc., stating shortly the offence*): These are therefore to command you in Her Majesty's name, to be and appear before me, on _____, at _____ o'clock in the forenoon, at _____, or before such other Justice or Justices of the Peace for the same parish, as may then be there, to answer to the said charge, and to be further dealt with according to law: Herein fail not.

Given under my hand, this _____ day of _____,
19____, at _____ in the parish aforesaid.

J.S.

FORM (18)

Warrant where the Summons is disobeyed

To each and all of the Constables of _____ and to all other Peace Officers in the said parish of _____

Whereas, on the _____ last past, A.B., of _____ (labourer), was charged before the undersigned, (one) of Her Majesty's Justices of the Peace, in and for the said parish of _____ for that (*etc., as in summons*): And whereas (I) then issued (my) summons to the said A.B., commanding him in Her Majesty's name, to be and appear before (me), on _____ at _____ o'clock in the forenoon, at _____, or before such other Justice or Justices of the Peace for the same parish, as might then be there, to answer to the said charge, and to be further dealt with according to law: And whereas the said A.B. hath neglected to be or appear at the time and place appointed in and by the said summons, although it hath now been proved to me, upon oath, that the said summons was duly served upon the said A.B.: These are therefore to command you, in Her Majesty's name, forthwith to apprehend the said A.B. and to bring him before me, or some other of Her Majesty's Justices of the Peace, in and for the said parish. to answer to the said charge, and to be further dealt with according to law.

Given under my hand, this _____ day of _____,
19____, at _____ in the parish aforesaid.

Form (23) (a)

Warrant Remanding a Prisoner

To each and all of the Constables of _____, and to the Superintendent
(or other head officer) of the (prison)
at _____

Whereas *A.B.* was this day charged before the undersigned (one) of Her Majesty's Justices of the Peace in and for the said parish of _____

, for that (*etc., as in the warrant to apprehend*), and it appears to me to be necessary to remand the said *A.B.*: These are therefore to command you, the said constables, in Her Majesty's name, forthwith to convey the said *A.B.* to the (prison) at _____, and there to deliver him to the Superintendent (*or other head officer*) thereof, together with this precept: And I hereby command you, the said Superintendent (*or other head officer*) to receive the said *A.B.* in your custody in the said (prison), and there safely keep him until the _____ day of _____ instant, when I hereby command you to have him at _____ at _____ o'clock in the forenoon of the same day, before me, or before such other Justice or Justices of the Peace for the said parish, as may then be there, to answer further to the said charge, and to be further dealt with according to law, unless you shall be otherwise ordered in the meantime.

Given under my hand, this _____ day of _____, 19 _____ at _____ in the parish aforesaid.

J.S.

FORM (23) (b)

Recognizance of Bail, instead of Remand on an Adjournment of Examination

Be it remembered, that on the _____ day of _____, in the year of our Lord 19 _____, *A.B.*, of _____, labourer, *L.M.*, of _____, gentleman and *N.O.*, of _____, planter personally came before me, one of Her Majesty's Justices of the Peace for the said parish, and severally acknowledged themselves to owe to our Sovereign Lady the Queen the several sums following, that is to say, the said *A.B.* the sum of _____, and the said *L.M.* and *N.O.* the sum of _____, each, of good and lawful money of this Island, to be made and levied of their several goods and chattels, lands and tenements, respectively, to the use of our said Sovereign Lady the Queen, her heirs and successors, if he the said *A.B.* fail in the condition indorsed. Taken and acknowledged the day and year first above-mentioned, at _____, before me.

J.S.

Condition

The condition of the within written recognizance is such, that, whereas the within bounden *A.B.* was this day (*or on last past*) charged before me. for that (*etc., as in the warrant*): And whereas the examination of the witnesses for the prosecution in this behalf is adjourned until the day of instant: If therefore the said *A.B.* shall appear before me on the said day of , at o'clock in the forenoon, or before such other Justice or Justices of the Peace for the said parish as may then be there, to answer (further) to the said charge, and to be further dealt with according to law, then the said reconizance to be void, or else to stand in full force and virtue.

FORM (23) (c)

Notice of such Recognizance to be given to the Accused and his Sureties

Take notice that you, *A.B.* of , are bound in the sum of , and your sureties *L.M.* and *N.O.* in the sum of each, that you, *A.B.* appear before me, *J.S.*, one of Her Majesty's Justices of the Peace for the parish of , on the day of instant, at o'clock in the forenoon at , or before such other Justice or Justices of the Peace for the same parish as may then be there, to answer further to the charge made against you by *C.D.*, and to be further dealt with according to law: And unless you, *A.B.*, personally appear accordingly, the recognizance entered into by yourself and sureties will be forthwith levied on you and them.

Dated this day of 19

J.S.

FORM(24)

Warrant to convey the Accused before a Justice of the Parish, etc., in which the Offence was committed

To each and all of the Constables of and to all other Peace Officers in the said parish of

Whereas, *A.B.* of , (labourer), hath this day been charged before the undersigned, (one) of Her Majesty's Justices of the Peace, in and for the said parish of , for that (*etc., as In the warrant to apprehend*): And whereas (I) have taken the deposition of *C.D.*, a witness examined by (me) in this behalf, but inasmuch as (I) am informed that the principal witnesses to prove the said offence against the said *A.B.*, reside in the parish of *C*: where the said offence is alleged to have been committed: These are therefore to

command you, the said constables in Her Majesty's name, forthwith to take and convey the said A.B., to the said parish of C., and there carry him before some Justice or Justices of the Peace, in and for that parish where the offence is alleged to have been committed, to answer further to, the said charge before him or them, and to be further dealt with according to law: And (I) hereby further command you, the said constables, to deliver to the said Justice or

... ..

PROVISIONS OF THE CRIMINAL JUSTICE ADMINISTRATION ACT WHICH IT IS PROPOSED TO AMEND

2.—(1) All indictments preferred at the Circuit Courts shall commence in the appropriate form as set forth in rule 2 of the Schedule to the Indictments Act.

... ..

(3) It shall be lawful for the Clerk of any Circuit Court to insert in any indictment presented for trial at such Court, any count or counts, being such as may be lawfully joined with the rest of such indictment, if the same be founded in the opinion of the Court in or before which such indictment is preferred) upon the facts or evidence disclosed in the examinations or depositions taken before a Resident Magistrate or Justice, in the presence of the person accused, or proposed to be accused by such indictment, and transmitted or delivered to such Court in due course of law.

PROVISIONS OF THE EVIDENCE ACT WHICH IT IS PROPOSED TO AMEND

Accused Persons' competency to give Evidence

9. Every person charged with an offence, and the wife or husband, as the case may be, of the person so charged, shall be a competent witness for the defence at every stage of the proceedings, whether the person so charged is charged solely or jointly with any other person:

Provided as follows—

(a) A person so charged shall not be called as a witness in pursuance of this Act, except upon his own application.

... ..

(g) Every person called as a witness in pursuance of this Act shall, unless otherwise ordered by the Court, give his evidence from the witness box or other place from which the other witnesses give their evidence.

- (h) Nothing in this Act shall affect the provisions of section 36 of the Justices of the Peace Jurisdiction Act; or any right of the person charged to make a statement without being sworn.

**PROVISIONS OF THE GUN COURT ACT WHICH IT IS
PROPOSED TO AMEND**

5.—(1) A Resident Magistrate's Division of the Court shall have jurisdiction—

- (a) to conduct any preliminary, examination relating to a firearm offence which is murder or treason, whether committed in, Kingston or St. Andrew or any other parish, other than the parishes referred to in section 8A (3) or a parish designated under section 8D, and to commit the accused to a Circuit Court Division of the Court;
- (b) to hear and determine any offence under subsection (3) of section 13;
- (c) without prejudice to the jurisdiction of any other Division, to grant bail, fix trial dates and determine all matters appearing to a Resident Magistrate, assigned to that Division of the Court to be ancillary to trial in any Division of the Court.

(2) A High Court Division of the Court shall have jurisdiction to hear and determine—

- (a) any firearm offence, other than murder or treason;
- (b) any other offence specified in the Schedule, whether committed in Kingston or St. Andrew or any other parish, other, than the parishes referred to in section 8A (3) or a parish designated under section 8D.

6.—(1) A Resident Magistrate in the parish of Kingston or St. Andrew or St. Catherine before whom any case involving a firearm offence is brought shall, forthwith transfer such case for trial by the Gun Court and the record shall be endorsed accordingly, but no objection to any proceedings shall be taken or allowed on the ground that any case has not been so transferred.

(2) A Resident Magistrate in any parish other than those referred to in subsection (1) or those specified in section 8A (3), before whom any case involving a firearm offence is brought—

- (a) if the offence is not murder or treason, may make such enquiry as he deems necessary in order to ascertain whether the offence

charged is within his jurisdiction and can be adequately punished by him under his powers, and thereupon, either—

- (i) direct that the accused person shall be tried in the Resident Magistrate's Court; or
 - (ii) without holding a preliminary examination, make an order that the accused person shall be committed to stand trial before a High Court Division of the Gun Court sitting in his parish or, after consultation with the Registrar, an adjoining parish; or
 - (iii) direct that the case be forthwith transferred for trial by the Gun Court;
- (b) if the offence is a capital offence, may order that a preliminary examination be held in the Resident Magistrate's Court with a view to committal for trial to a Circuit Court Division of the Gun Court sitting in his parish.

(3) For the purposes of this Act a Supreme Court Judge on Circuit in any parish—

- (a) sitting without a jury, is hereby constituted a High Court Division of the Gun Court; and
- (b) sitting with a jury, is hereby constituted a Circuit Court Division of the Gun Court,

and, without prejudice to the powers conferred by section 7, the jury summoned for the Circuit Court shall, constitute the jury for the Gun Court and the Chief Justice may, by order, regulate any other arrangements for the reference to, and trial, of, cases in any such Division, and any such order may contain such consequential, supplementary or ancillary provisions as appear to the Chief Justice to be necessary or expedient.

12.—(1) Save as may be otherwise prescribed, by this Act or by any regulations hereunder, the practice and procedure in the Resident Magistrate's Court shall, *mutatis mutandis*, obtain in a Resident Magistrate's Division of the Court.

(2) Notwithstanding anything to the contrary, the trial of any person before a High Court Division of the Court shall be commenced by the preferring of an indictment against such person—

- (a) by any officer performing the functions of Clerk of that Division; or

- (b) by like direction, or with like consent, as authorized by virtue of subsection (2) of section 2 of the Criminal Justice (Administration) Act, and there shall be no preliminary examination.

(3) For the purposes of a trial in a High Court Division of the Court steps shall be taken, in such manner and subject to such terms and conditions (if any) as may be prescribed, to make available to the accused or his attorney-at-law copies of statements of such witnesses as are intended to be called to give evidence for the prosecution.

PROVISIONS OF THE JUDICATURE RESIDENT MAGISTRATES
ACT WHICH IT IS PROPOSED TO AMEND

40. It shall not be necessary for the Clerk of any Court to appear in and prosecute in preliminary examinations on charges or informations for indictable offences triable in the Circuit Court, or to marshal the evidence therein unless called upon to do so in any particular case by the Magistrate.

64. Every Magistrate shall, within his parish or parishes, take all necessary and requisite preliminary examinations and depositions on charges or informations for indictable offences triable in the Circuit Court.

272. On a person being brought or appearing before a Magistrate in Court or in Chambers, charged on information and complaint with any indictable offence, the Magistrate shall, after such enquiry as may seem to him necessary in order to ascertain whether the offence charged is within his jurisdiction, and can be adequately punished by him under his powers, make an order, which shall be endorsed on the information and signed by the Magistrate, that the accused person shall be tried, on a day to be named in the order, in the Court or that a preliminary investigation shall be held with a view to a committal to the Circuit Court.

274. The trial of any person before a Resident Magistrate's Court for an indictable offence, shall be commenced by the Clerk of the Courts preferring an indictment against such person and there shall be no preliminary examination.

276. On the other hand, when the Magistrate has begun to deal with a case as for the Circuit Court, and to take the depositions of the witnesses with a view to a committal for trial, if the crime with which the accused is charged is within his jurisdiction, and it appears to him that such crime may be adequately punished by him, it shall be lawful for him to vacate the order for a preliminary investigation, and to make an order, to be endorsed on the information and signed by the Magistrate, that the accused person be tried in the Court, if the accused person consent, either forthwith or on a day to be named, within seven

days after the date of such order. In such a case the evidence of any witness which had been taken before the Magistrate ordered an indictment to be preferred before himself, need not be taken again; but every such witness shall, if the accused person so require it, be recalled for the purpose of cross-examination or further cross-examination.

279. In any trial of an indictment before a Court, the Magistrate shall have the same powers of adjourning the trial, and for that purpose of remanding the accused, as are possessed by him in cases where he is taking a preliminary examination under the Justices of the Peace Jurisdiction Act; and it shall be his duty to grant such adjournments (taking care to secure the continued attendance of the accused and witnesses by committal or by recognizance), as the ends of justice shall appear to him to require.

286. When any person charged before a Court with any offence is confined in any prison or place, whether before or after any conviction, or in any civil proceeding, the Magistrate shall issue on a weekly basis an order under his hand, and under the seal of the Court, for bringing up before such Court such person to be tried for such offence, or to be present during any examination respecting such offence.

Where any person is confined in any prison or place within, his jurisdiction the Magistrate shall issue on a weekly basis an order under his hand and under the seal of the Court, for bringing up before the Court such person for the purpose of making enquiries into the circumstances and reasons for the detention of such person and of making such orders in the circumstances as he thinks fit.

The person mentioned in an order under either of the preceding paragraphs shall be brought before the Court under the same care and custody, and be dealt with in like manner in all respects, as a prisoner brought up on a writ of *habeas corpus* awarded by the Supreme Court, or any Judge thereof, to be tried before the Resident Magistrate's Court, is now by law authorized to be dealt with:

Provided, that the person having the custody, of such prisoner shall not, in a prosecution in which Court fees are payable under this Act, be bound to obey such order, unless a tender be made to him of a reasonable sum, to be fixed by the Resident Magistrate's Court Rules, and in the absence of rules on this point, to be fixed by the Magistrate, for the conveyance and maintenance of proper officers and of the prisoner in going to, remaining at and returning from such Court.

In other criminal cases the Magistrate shall have power to award such reasonable sum for the expenses aforesaid as he may think fit, which shall be defrayed from the Treasury.

PROVISIONS OF THE WITNESSES EXPENSES ACT
WHICH IT IS PROPOSED TO AMEND

7. In indictable cases where a preliminary enquiry is held witnesses (subject to the provisions of section 5) shall be entitled to be paid their expenses at the preliminary enquiry (whether as the result of such enquiry the accused person is committed for trial, or not), and also, in case of committal for trial, at the Court where the trial takes place:

Provided, that whereas the result of such preliminary enquiry, the accused person is committed for trial, a witness bound over to give evidence, at such trial shall not be paid his expenses for the preliminary enquiry unless, where there has been a trial, he shall have attended to give evidence in pursuance of his recognizance, or the Resident Magistrate shall, at such preliminary enquiry, or at any time thereafter prior to the commencement of the Circuit, Court to which the accused person is committed for trial, have directed that the expenses of such witness for the preliminary enquiry be paid forthwith.

8. When any accused person is committed for trial, the Clerk of the Courts shall attach to the depositions for the guidance of the officer of the court at which, such accused person is to be tried, a list showing the number of attendances at the preliminary enquiry of each person attending as a witness, together with a statement showing the distance that each such person lives from the Court House or place where the preliminary enquiry was held.

16.—(1) Where the taxing officer is satisfied that by reason of—

- (a) the distance between the home of a witness and the place of trial;
or
- (b) the state of health of a witness; or
- (c) the means of communication between the home of a witness and the place of trial; or
- (d) the necessity for a witness to attend court upon more than one day,

a witness was necessarily absent from his home for more than one day, for the purpose of giving evidence, the taxing officer may allow, in addition to any sum payable to a witness under section 3, such further sum as he is satisfied represents any reasonable expenditure actually incurred by the witness for lodging and necessary subsistence during the period between his departure from his home to attend court and his return to his home after so attending court.

(2) For the purposes of this section "taxing officer" means—

- (a) in respect of trials by the Supreme Court while sitting in Kingston, the Registrar of the Supreme Court or an officer deputed by him to act on his behalf;
- (b) in respect of trials by the Supreme Court while sitting elsewhere than in Kingston, the Clerk of the Court so sitting;
- (c) in respect of preliminary enquiries, Coroner's inquests or trials in the Resident Magistrate's Court, the Clerk of such Resident Magistrate's Court; and
- (d) in respect of preliminary examinations or trials in Petty Sessions Court, the Clerk of the Resident Magistrate's Court in which such Petty Sessions Court is held.