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FRIDAY 3RD MAY, 2024

THE OFFICIAL GAZETTE 3RD MAY, 2024
LEGAL SUPPLEMENT — C

BILL No. 7 of 2024 *Friday 3rd May, 2024*

PARLIAMENT OFFICE
Public Buildings,
Georgetown,
Guyana.

3rd May, 2024

The following Bill which will be introduced in the National Assembly is published for general information.

S.E. Isaacs,
Clerk of the National Assembly.

GUYANA

BILL No. 7 of 2024

CRIMINAL LAW PROCEDURE (PAPER COMMITTALS) BILL

ARRANGEMENT OF SECTIONS

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A BILL

Intituled

AN ACT to provide for the abolition of preliminary inquiries; to provide for the procedure in respect of paper committal proceedings in criminal matters; and for matters connected thereto.

A.D.2024

Enacted by the Parliament of Guyana –

PART I
PRELIMINARY

Short title and commencement.

1. This Act may be cited as the Criminal Law Procedure (Paper Committals) Act 2024, and shall come into operation on the date the Minister may, by order, appoint.

Interpretation.

2. In this Act –

"court" means a court of summary jurisdiction;

"document" includes anything in which information of any description is recorded;

"Minister" means the Minister responsible for legal affairs; and

"paper committal" means a committal proceeding held in accordance with this Act.

Application.

3. (1) Subject to subsection (2), this Act shall extend and apply to all proceedings in respect of indictable offences.

(2) This Act shall not apply to proceedings under the Sexual Offences Act. Cap. 8:03

Abolition of preliminary inquiries. Cap. 10:01

4. Notwithstanding the provisions of the Criminal Law (Procedure) Act, where a person is charged with a criminal offence under any enactment there shall be no oral preliminary inquiry and instead a paper committal shall be held by a magistrate in accordance with the procedure set out in Part II.

PART II
PROCEDURE IN PAPER COMMITTALS

Proceedings in the presence of the accused.

5. (1) Subject to subsection (2), the accused shall be present at a paper committal.

(2) A magistrate may proceed with a paper committal in the absence of the accused if –

(a) the magistrate considers that by reason of the disorderly conduct of the accused before the magistrate it is not practicable for the evidence to be tendered in the presence of the accused;

(b) the accused cannot be present for reasons of ill health but is represented by an attorney-at-law and has consented to the evidence being tendered in the absence of the accused; or

(c) there is evidence that the accused is deliberately absenting himself or herself from the court.

Adjournment.

6. (1) A magistrate may adjourn the proceedings before beginning a paper committal or at any time during the proceedings.

(2) Where the magistrate adjourns the proceedings in accordance with subsection (1), the magistrate may remand the accused.

(3) The court shall, when adjourning, fix the time and place at which the proceedings are to be resumed and the time fixed shall be no later than twenty-one (21) days at which the accused is required to appear or be brought before the court in pursuance of the remand.

Evidence which is admissible.

7. (1) For the purposes of a paper committal, credible evidence of the prosecution and the defence shall be allowed.

(2) The prosecutor, or a person acting on behalf of the prosecutor, shall file in the registry of the court and serve on the accused or counsel acting on behalf of the accused, all evidence for the prosecution for the purposes of a paper committal not later than forty-five days after the date on which the accused first appears in court in relation to the complaint.

(3) The accused, or counsel on behalf of the accused, shall file in the registry of the court and serve on the prosecutor or counsel acting on behalf of the prosecutor, all evidence for the defence for the purposes of a paper committal not later than forty-five days after the date on which the prosecutor, or a person acting on behalf of the prosecutor served the prosecution's evidence on the accused or counsel acting on behalf of the accused.

(4) The court may for good reason extend the time for filing and service of evidence on the part of either party pursuant to subsection (3) and (4).

(5) Notwithstanding subsection (3), where charges were instituted prior to the commencement of this Act, the accused, or counsel on behalf of the accused, shall file in the registry of the court

all evidence for the defence for the purposes of the paper committal not later than forty-five days after the date on which the magistrate reopened the paper committal.

(6) Notwithstanding subsections (3) and (4), if at any stage of the paper committal, either party intends to rely on any additional evidence, that party shall file such evidence in the registry of the court seven days before such evidence is tendered into evidence.

(7) A copy of the evidence filed –

(a) by or on behalf of the prosecutor, shall be served on the accused; and

(b) by or on behalf of the defence, shall be served on the prosecutor.

(8) The following evidence of the prosecution and the defence shall be admissible for the purposes of a paper committal –

(a) written statements which satisfy the requirements of section 8;

(b) the documents or other exhibits referred to in the written statements, if any;

(c) depositions taken which satisfy the requirements of section 9;

(d) the documents or other exhibits referred to in the depositions;

(e) statements which satisfy the requirements of section 10;

(f) documents which satisfy the requirements of section 11;

Cap 10:01

(g) depositions which satisfy the requirements of section 68 of the Criminal Law (Procedure) Act.

Written statements.

8. (1) A written statement by any person is admissible as evidence for the purposes of a paper committal if it satisfies the following requirements –

(a) the statement is signed or marked by the person who made it;

(b) the statement contains a declaration by the person who made it to the effect that it is true to the best of the person's knowledge and belief and that the person made the statement knowing that, if it were tendered in evidence, the person would be liable to prosecution for wilfully stating in it anything which the person knew to be false or did not believe to be true;

(c) before the statement of the prosecution is tendered in evidence, a copy of the statement is given, by or on behalf of the prosecutor, to the accused;

(d) before the statement of the defence is tendered in evidence, a copy of the statement is given, by or on behalf of the defence, to the prosecutor;

(e) a statement of either party is to be given to the other party seven days before it is tendered into evidence;

(f) if the statement is made by a person under eighteen years of age, it specifies the age of that person;

(g) if the statement is made by a person who cannot read it, the statement was read to that person before the person signed it and is accompanied by a declaration by the reader to the effect that the statement was read to the person and that the person to whom it was read appeared to understand its contents;

(h) if the statement is made by a person who is suffering from a physical disability or physical disorder that renders him unable to sign or otherwise make a mark, but capable of otherwise affirming or negating any statement recorded, then it shall be read to him or otherwise effectively communicated to him and shall be accompanied by a declaration by the recorder that the statement has been made with the affirmation of the person, indicating the manner of such affirmation;

(i) if the statement refers to any other document as an exhibit, a copy of the statement given to the prosecutor or accused is accompanied by a copy of that document or, if not practicable,

with any information as may be necessary to enable the party to whom it was given to inspect that document or a copy of it.

(2) Any document or other object referred to as an exhibit and identified in a statement admitted 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 statement.

(3) Every written statement tendered to the court and every document tendered as an exhibit in committal proceedings in accordance with Section 8, shall be signed by the Magistrate presiding over those proceedings.

(4) If a statement is not admissible by reason of its failure to satisfy the formalities set out foregoing provisions of this section, the Magistrate will decline to admit the evidence in its current form.

(5) The prosecution or the defence may –

(a) apply to adjourn for the formalities to be rectified, which application the Magistrate may allow or adjourn in his discretion;

(b) ask the Magistrate to allow the witness to give oral evidence, which he may permit; or

(c) choose to continue without the evidence of that witness.

Depositions

9. (1) A deposition taken pursuant to section 14 is admissible as evidence for the purposes of a paper committal if it satisfies the following requirements –

(a) a copy of the deposition is sent to the prosecutor by the clerk of the court not later than seven working days after the deposition is taken;

(b) a copy of the deposition is served on the accused or his counsel seven days before the deposition is tendered into evidence;

(c) if the deposition refers to any document as an exhibit, the copy of the deposition given to the prosecutor or the accused is accompanied by a copy of that document or, if not practicable, with any information as may be necessary to enable the party to whom it is given to inspect the document or the copy of it.

(2) Any document or other object referred to as an exhibit and identified in a deposition admitted in evidence shall be treated as if it had been produced as an exhibit and identified in court by the person whose evidence is taken as the deposition.

Other statements.

10. Any other statement may be admissible as evidence for the purposes of a paper committal if it satisfies the following requirements–

(a) the prosecutor by giving seven days' notice, notifies the magistrate and the accused that the prosecutor believes –

(i) that the statement might be admissible as evidence if the case

Cap. 5:03

came to trial under section 91 or section 92 of the Evidence Act; or

(ii) that the statement would not be admissible as evidence if the case came to trial otherwise than under section 91 or section 92 of the Evidence Act;

(b) the prosecutor's belief is based on information available to the prosecutor at the time of the notification;

(c) the prosecutor has reasonable grounds for the belief;

(d) the prosecutor gives the reasons for the belief at the time of the notification; and

(e) the prosecutor gives a copy of the statement to the court and the other party at the time of the notification.

Other documents.

11. (1) Any other document is admissible as evidence for the purposes of a paper committal if the document, by virtue of any law or enactment –

(a) is admissible as evidence in any criminal proceedings;

(b) is admissible, or may be used, or is to be admitted or received as evidence in any criminal proceedings;

(c) may be considered in any proceedings;

(d) by its production, constitutes proof in any criminal proceedings; or

(e) by its production, evidence may be given in any criminal proceedings.

(2) References to evidence under subsection (1) include references to *prima facie* evidence.

Evidence to be read aloud.

12. So much of any deposition, written statement, document or other statement as is admitted in evidence under this Part shall –

(a) unless the court commits the accused for trial pursuant to section 15 or the court otherwise directs, be read aloud at the paper committal; and

(b) where the court so directs, be given orally in the form of a summary or description of so much of any deposition, statement or document as is not read aloud in full.

Proof by production of copy.

13. (1) Where a statement, deposition or document is admissible in evidence under this Part, it may be proved by the production of –

(a) the statement, deposition or document;

(b) a copy of the statement, deposition or document, whether or not the original is still in existence; or

(c) the material part of the statement, deposition or document.

(2) For the purposes of this section, it is immaterial how many removes there are between a copy and the original.

(3) In this section "copy", in relation to a statement, deposition or document, means anything on which information recorded in the statement, deposition or document has been copied, by whatever means and whether directly or indirectly.

Summons or warrant as to depositions.

14. (1) Where a magistrate is satisfied that –

(a) any person is likely to be able to –

(i) make a written statement containing material evidence on behalf of the prosecutor or the accused; or

(ii) produce a document or other exhibit likely to be material evidence on behalf of the prosecutor or the accused,

for the purposes of proceedings before a magistrate holding a paper committal; and

(b) it is in the interests of justice to issue a summons under this section to secure the attendance of that person to give evidence or to produce the document or other exhibit,

the magistrate shall issue a summons directed to that person requiring the person to attend before the magistrate at the time and place appointed in the summons to have that person's evidence taken as a deposition or to produce the document or other exhibit.

(2) If a magistrate is satisfied by evidence on oath of the matters mentioned in subsection (1) and that it is probable that a summons would not procure the result required by it, the magistrate may, instead of issuing a summons, issue a warrant to arrest the person concerned and bring the person before the magistrate at the time and place specified in the warrant.

(3) A magistrate may issue a warrant to arrest a person and bring the person before the magistrate at a time and place specified in the warrant if –

(a) the person fails to attend before a magistrate in answer to a summons under this section;

(b) the magistrate is satisfied by evidence on oath that the person is likely to be able to make a statement or produce a document or other exhibit as mentioned in subsection (1) (a);

(c) it is proved on oath or in such other manner as may be prescribed, that the person has been duly served with the summons and in the case of a private citizen, a reasonable sum has been paid or laid over to the person for costs and expenses; and

(d) it appears to the magistrate that there is no just excuse for the failure.

(4) Where a summons or a warrant is issued under this section, the time appointed in the summons or specified in the warrant shall be such as to enable the evidence to be taken as a deposition before a magistrate begins the paper committal.

(5) If, pursuant to this section—

(a) a person's evidence is taken as a deposition; or

(b) a person produces an exhibit that is a document,

the clerk of the magistrate's court shall as soon as is reasonably practicable send copies of the deposition or the document, as the case may be, to the prosecutor and the accused.

(6) If, pursuant to this section, a person produces an exhibit which is not a document, the clerk of the magistrate's court shall as soon as is reasonably practicable inform the prosecutor and the accused of the fact and of the nature of the exhibit.

Committal for trial.

15. If a magistrate holding a paper committal is satisfied that all the evidence tendered by or on behalf of the prosecutor and the accused is admissible under section 7, the magistrate shall commit the accused for trial for the offence without consideration of the contents of any statements, deposition or other documents and without consideration of any exhibits which are not documents, unless –

(a) the accused or one of the accused does not have an attorney-at-law acting for the accused in the case; or

(b) the attorney-at-law acting for the accused or one of the accused has requested the court to consider a submission that there is insufficient evidence to put the accused on trial for the offence.

Procedure for committal without consideration of the evidence.

16. (1) Where the accused has an attorney-at-law acting for the accused in the case and where all the evidence tendered is admissible under section 7, the magistrate shall cause the charge to be read to the accused and shall then ascertain whether the accused wishes to submit that there is insufficient evidence to put the accused on trial for the offence charged.

(2) If the magistrate is satisfied that the accused does not wish to make a submission that there is insufficient evidence to put the accused on trial for the offence charged, the magistrate shall, without consideration of the evidence, commit the accused for trial.

Procedure for committal or discharge on consideration of the evidence.

17. Where –

(a) the accused or one of the accused does not have an attorney-at-law acting for the accused in the case; or

(b) the attorney-at-law acting for the accused or one of the accused has requested the court to consider a submission that there is insufficient evidence to put the accused on trial by jury for the offence charged,

the magistrate shall consider all the evidence tendered and the submissions made under subsection (2) and shall then determine whether, in the magistrate's opinion, there is sufficient evidence to

commit the accused for trial or to discharge the accused if the magistrate is of the opinion that there is insufficient evidence.

(2) Subject to subsection (1), the magistrate shall follow the following procedure –

(a) the magistrate may permit the prosecutor to make an opening address to the court before any evidence is tendered;

(b) after the prosecutor's opening address, if any, the magistrate shall cause the evidence to be tendered in accordance with section 12, that is to say by being read out aloud, except where the court otherwise directs or to the extent that it directs that a summary or description shall be given of so much of any statement as is not read aloud;

(c) the court may view any exhibits produced before the court and may take possession of them;

(d) after the evidence has been tendered the court shall hear any submission that the accused may wish to make as to whether there is insufficient evidence to put the accused on trial by jury for any indictable offence; and

(e) the court shall permit the prosecutor to make a submission –

(i) in reply to any submission made by the accused; or

(ii) where the accused has not made any submission but the magistrate is nevertheless minded not to commit the accused for trial.

Record of reasons.

18. The magistrate shall record the reasons for the committal or discharge of the accused person in writing.

Power of Director of Public Prosecutions after discharge of accused person.

19. (1) In any case where a magistrate discharges an accused person, the Director of Public Prosecutions may make a written request to the magistrate to furnish an authenticated copy of the statements, documents, depositions, and exhibits tendered in connection with the case and the magistrate shall comply with the request.

(2) Where the Director of Public Prosecutions, after considering the statements, documents, depositions and exhibits furnished by the magistrate under subsection (1), is of the opinion that a *prima facie* case against the discharged person was established and the discharged person should have been committed for trial, the Director of Public Prosecutions shall make an application to a Judge of the High Court for a warrant for the arrest and committal for trial of the discharged person:

Provided that a Judge shall only grant the application of the Director of Public Prosecutions where the Judge is satisfied that the evidence, as given before the magistrate, was sufficient to commit the discharged person for trial.

(3) Every application under subsection (2) shall be made within three (3) calendar months of the receipt, from the magistrate, of

the authenticated copy of the depositions taken at the preliminary inquiry and every other statement, document or exhibit tendered in connection with the case.

(4) Where a Judge grants an application for the arrest and committal for trial of a discharged person under subsection (2), the Judge shall issue the warrant for the arrest and committal for trial of the discharged person and that person shall be kept until otherwise discharged in the due course of law or granted bail.

(5) Every person proceeded against under subsection (4) shall be further prosecuted in the like manner as if that person had been committed for trial by the magistrate by whom the person was discharged.

(6) Where the Director of Public Prosecutions or the discharged person is aggrieved by a decision of the Judge under this section, an appeal of that decision shall lie to the Court of Appeal.

Evidence after committal of accused person.

20. (1) Any person whose statement, deposition, document or exhibit was not tendered in evidence by the prosecutor or the accused during a paper committal may give evidence at the trial of the accused person.

(2) A party seeking to adduce evidence shall serve the evidence, in the form of a statement, deposition or document which would be admissible under this Part, on the other party to the proceedings seven days before the date on which –

(a) the witness will give evidence at the trial;

or

(b) the contents of the statement, deposition or other document will be entered into evidence.

PART III
GENERAL AND MISCELLANEOUS PROVISIONS

Consequential amendments. Cap. 10:01

21. The Criminal Law (Procedure) Act is amended by repealing section 71A and section 76.

Consequential amendments. Cap. 5:03

22. The Evidence Act is amended by repealing section 95.

23. (1) Statements, and depositions together with any documents and exhibits referred to therein, which are tendered in evidence in proceedings under this Act may, if the conditions hereinafter set out in this section are satisfied, without further proof be read into evidence on the trial of that person, whether for that offence or for any other offence arising out of the same transaction or set of circumstances as that offence.

The conditions hereinbefore referred to are the following –

(a) The statement or deposition must be the statement or deposition either of a witness whose attendance at the trial is stated to be unnecessary in accordance with the provisions of this section, or who is absent

from Guyana and cannot be found, or of a witness who is proved at the trial by the oath of a credible witness to be dead or insane, or so ill as not to be able to travel, or to be kept out of the way by means of the procurement of the accused or on his behalf, provided that if the court is satisfied that such absence is caused by or due to any improper motive connected with the cause on the part of the maker of the statement and, if that motive exists, that there is any collusion between the maker of the statement and party tendering the statement in respect of the motive, this enactment shall not apply;

(b) The statement or deposition was authenticated by the magistrate who conducted the proceedings under this Act or by a certificate of the clerk of the magistrate, proof of which must be given at the trial by a credible witness under oath.

Provided that the provisions of this subsection shall not have effect in any case -

(i) where it is proven that the statement or deposition was not authenticated by the magistrate or the certificate was not in fact signed by the clerk by whom it purports to have been signed;

(ii) where the statement or deposition is the statement or deposition of a witness whose attendance is stated to be unnecessary as aforesaid, that the witness has been duly summoned by the Court to attend the trial.

(2) In the case of a deposition taken under section 68 of the Criminal Law (Procedure), the provision of this section shall apply on it being proved at the trial, either by a certificate purporting to be signed by the magistrate before whom the deposition purports to have been taken or by the oath of a credible witness that reasonable notice of the intention to take such deposition was served on the person (whether accused or prosecutor) against whom it is proposed to be given in evidence.

(3) It shall be sufficient evidence of absence of Guyana, within the meaning of this section, to prove that the maker of the statement or the deponent was on board a vessel or aircraft on its outward journey from Guyana bound for some port or place beyond Guyana, and that on enquiry being made before trial at his last or most usual place of abode or business he could not be found.

(4) If it is made to appear to the Court that the witness who made any statement or deposition may, within a reasonable time, be capable of attending to give evidence and that the ends of justice require that the witness should be examined personally before the jury, the Court may postpone the trial on any terms it thinks just.

Laws inconsistent with this Act.

24. Where any provision of any law is in conflict or inconsistent with any provision of this Act, the provision of this Act shall prevail.

Laws to applied. Cap.5:03 Cap.10:01

25. Except as otherwise provided by this Act, the Evidence Act and the Criminal Law (Procedure) Act shall apply to this Act where necessary with such modifications, adaptations and qualifications that may be needed for the due administration of this Act.

Transitional Provision.

26. Notwithstanding the abolition of preliminary inquiries under this Act, if there are any pending proceedings instituted, the proceedings shall be disposed of or continued under the law as it stood immediately before the commencement of this Act.

EXPLANATORY MEMORANDUM

This Bill provides for the abolition of preliminary inquiries and the substitution thereof with paper committals, which involves reviewing the evidence and arguments presented by both the prosecution and the defence in written form, rather than conducting an oral in-person hearing.

Part I, which includes **Clauses 1 to 4** of the Bill deals with the preliminary matters pertaining to the Bill. **Clause 1** provides for the short title and commencement of the Bill. **Clause 2** sets out the definition of key words and expressions used throughout the Act. **Clause 3** provides for the application of the Act to all proceedings in respect of indictable offences, except for proceedings under the Sexual Offences Act, Cap. 8:03. **Clause 4** provides for the abolition of oral preliminary inquiries and the substitution thereof with paper committals.

Part II includes **Clauses 5 to 20**. **Clause 5** sets out the procedure to be followed in paper committals. **Clause 6** empowers the magistrate to adjourn proceedings before beginning a paper committal or anytime during the proceedings. **Clause 7** provides for the admission of evidence and sets out the timeline for which all credible evidence should be filed by both the prosecutor or person acting on behalf of the prosecutor or, the accused or counsel on behalf of the accused. **Clause 8** provides for the evidential requirements that must be met with respect to written statements sought to be admitted as evidence in paper committal proceedings.

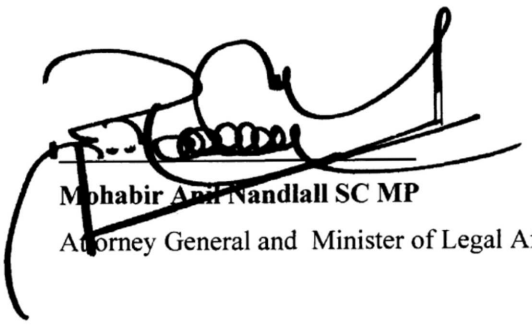
Clause 9 sets out the requirements which must be met for depositions to be admissible as evidence for the purpose of a paper committal. **Clause 10** provides for the evidential requirements that must be met with respect to other statements sought to be admitted as evidence in paper committal proceedings. **Clause 11** provides the evidential requirements that must be met with respect to other documents sought to be admitted as evidence in paper committal proceedings. **Clause 12** requires evidence to be read aloud in paper committal proceedings.

Clause 13 provides for a statement, deposition or document admitted in evidence to be proved by the production of a copy thereof. **Clause 14** empowers a magistrate to issue a summons or warrant directing that a person's evidence be taken as a deposition or requiring that person to produce a document or other exhibit.

Clause 15 provides for a magistrate to commit an accused for trial for an offence if the magistrate is satisfied with the admissibility of the evidence. **Clause 16** sets out the procedure whereby a magistrate may commit an accused for trial without consideration of the evidence. **Clause 17** sets out the procedure for the committal or discharge of an accused person on consideration of the evidence. **Clause 18** requires a magistrate to record the reasons for the committal or discharge of an accused person in writing. **Clause 19** empowers the Director of Public Prosecutions to make an application to a Judge of the High Court for a warrant for the arrest and committal for trial of a person discharged by a magistrate in circumstances where the Director of Public Prosecutions is the opinion that a *prima facie* case against the discharged person was established and the discharged person should have been committed for trial. **Clause 20** provides for a person whose statement, deposition, document or exhibit was not tendered in evidence during a paper committal to give evidence at the trial of the accused person.

Part III of the Bill provides general and miscellaneous provisions and contains **Clauses 21 to 26. Clause 21** provides for a consequential amendment to the Criminal Law (Procedure) Act, Cap. 10:01. **Clause 22** repeals section 95 of the Evidence Act, Cap 5:01. **Clause 23** provides for the admissibility of statements and deposition of witnesses whose statement or deposition was relied on at the committal proceedings but are no longer available to give evidence at the trial. Clause **24** provides that where any provision of any law is in conflict or inconsistent with any provision of the Act, the provision of the Act shall prevail.

Clause 25 provides for the Evidence Act, Cap. 5:03 and the Criminal Law (Procedure) Act, Cap. 10:01 to apply to the Act where necessary with such modifications, adaptations and qualifications that may be needed for the due administration of the Act. **Clause 26** provides that any pending proceedings shall be disposed of or continued under the law as it stood immediately before the commencement of the Act.



Mohabir Anil Nandlall SC MP
Attorney General and Minister of Legal Affairs.