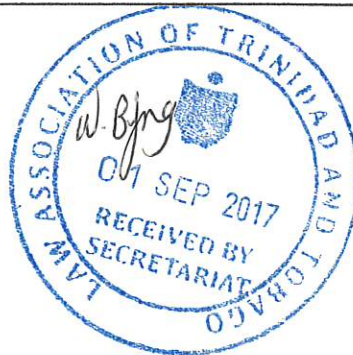




THE REPUBLIC OF TRINIDAD AND TOBAGO
ATTORNEY GENERAL & MINISTER OF LEGAL AFFAIRS
THE HONOURABLE FARIS AL RAWI, LL.B, LL.M.

August 25th, 2017

Mr. Douglas Mendes S.C.
President
The Law Association of Trinidad and Tobago
2nd Floor
#95-97 Frederick Street
Port of Spain



Dear Mr. Mendes S.C.,

RE: PROPOSED AMENDMENTS TO THE EVIDENCE ACT CHAPTER 7:02

Reference is made to the matter at caption.

Legislative reform is proposed in respect of the Evidence Act Chapter 7:02 and in this regard, the invaluable input of the Law Association of Trinidad and Tobago ("LATT") in respect of such recommended amendments would be greatly appreciated.

I would be grateful for comments on the enclosed Bill, which is submitted for your perusal and attention. The considered views of the LATT in respect of this Bill would be of significance in the finalisation of same and it is kindly asked if such comments can be provided as soon as possible.

Should you require further assistance, information or clarification, please do not hesitate to contact Ms. Nirana Parsan, Attorney General's Secretariat, at 223-2452 Ext. 3816 or email at nparsan@ag.gov.tt.

I look forward to your contribution and I wish to thank you in anticipation for your urgent attention to this matter.

Yours sincerely,

Faris Al Rawi, M.P.,
Attorney General and Minister of Legal Affairs

Encl.

A BILL

An Act to amend the Evidence Act, Chap. 7:02

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

Short title and
commencement 1. This Act may be cited as the Evidence (Amendment) Act, 2016 and comes into operation on such date as is fixed by the President by Proclamation.

Sections 12 to
12AJ inserted 2. The Evidence Act is amended by inserting before section 13 and immediately after the heading "Part II EVIDENCE IN CRIMINAL CASES", the following sections:

"GENERAL

Interpretation of
certain words
and phrases in
Part II

12. In this Part-

"audio recording" means any recording made on any medium of the verbal statement of a person given during an interview;

"child witness" means a witness under the age of eighteen years;

"confrontation" means an occurrence where the suspect comes directly face to face with a witness, without his consent;

"identification officer" means a police officer of the rank of inspector or higher;

"identification procedure" means a method or system of ascertaining or determining the identity of a suspect for the purposes of an investigation;

"interview" includes-

- (a) any interrogation of, or taking of a written statement or written confession from a person

suspected of committing an offence; and

- (b) any interrogation of a person charged with committing an offence for the purpose of preventing or minimizing harm or loss to some other person or to the public or for clearing up an ambiguity in a previous answer or statement;

“interviewee” means a person being interviewed for the purposes of a criminal investigation;

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

“investigation” means a criminal investigation;

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

“master copy”, in relation to a video or audio recording, means one of the audio or video recording media used to record the statement of the accused or the witness in the presence of an accused, a suspect, or a witness;

Chap. 15:01

“police officer” has the meaning assigned to it by the Police Service Act;

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

“representative”, in relation to a suspect, means-

- (a) an Attorney-at-law; or

- (b) any other person nominated by, or representing the suspect;

“special measure” means the giving of evidence by a witness in criminal proceeding in the

manner provided and under the circumstances set out in sections 12Z to 12AD of this Act;

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

- (a) the Judge or Magistrate;
- (b) the parties to the proceedings;
- (c) the Attorney-at-law acting in the proceedings;
- (d) the jury where there is one;
- (e) any interpreter or other person appointed to assist; or
- (f) any other person who may be required to assist the Court in the conduct of its proceedings;

“video recording” means any recording, on any medium, from which a moving image may by any means be produced, and includes the accompanying soundtrack;

“witness anonymity orders” means an order made by a Court which requires such specified measures to be taken in relation to a witness in criminal proceedings, as the Court considers appropriate, to ensure that the identity of the witness is not disclosed in, or in connection with, the proceedings; and

“working copy”, in relation to a video or audio recording means one of the video recording or audio recording media, other than the master copy, on which the statement of an accused, a suspect or a witness was recorded in the presence of the suspect or witness.

IDENTIFICATION PROCEDURES

Identification
procedure

12A. (1) An identification procedure shall be conducted where a witness to a crime has by means of a name, or general description or otherwise, identified a

person as a suspect of the crime, and the person so suspected disputes being the person the witness claims to have seen.

(2) An identification procedure may also be conducted where the investigating officer in charge of a criminal investigation considers that it would be necessary to do so.

Identification
officer

12B. An identification officer -

(a) shall-

(i) be responsible for making arrangements for an identification procedure; and

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

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

Form of
identification
procedure

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

(a) identification using video medium, where the identification of the suspect is sought by showing a witness moving images of the suspect together with similar images of other persons who resemble the suspect;

(b) an identification parade in accordance with section 12H;

(c) identification using photographs in accordance with section 12J;

(d) identification in a public place in accordance with section 12K; or

(e) identification by confrontation in accordance with section 12L.

(2) Where video or photo identification is used in an identification procedure, the images of the suspect together with similar images of persons who resemble the

suspect shall be utilized as a comparison to determine the identity of the suspect.

(3) All the images referred to in subsection (2), shall be shown to the witness individually and sequentially.

Consent

12D. (1) Where an identification procedure is to be conducted, the suspect shall be given the opportunity to give consent to the procedure, and his consent or refusal, shall be in the form set out as Form A in the Fourth Schedule.

Fourth Schedule
Form A

(2) Notwithstanding subsection (1) but subject to sections 12K and 12L, a refusal by the suspect to give consent shall not be a bar to the identification procedure being conducted.

Requirements for
an identification
procedure

12E. (1) Where an identification procedure is to be carried out in respect of a suspect, the following shall be orally explained to him by the identification officer:

- (a) the reason and purpose for carrying out the identification procedure;
- (b) his entitlement to obtain legal representation and advice;
- (c) his right to have a representative present during the procedure;
- (d) his right to refuse to consent to, or to co-operate in an identification procedure;
- (e) if he refuses to consent to, or to co-operate in the identification procedure, this fact may be used in evidence in any subsequent trial;
- (f) that where he has refused to consent to any other identification procedure, arrangements can be made without his consent to have an identification procedure conducted in a public place or have him confronted by a witness in a cell or other designated place;
- (g) for the purposes of video identification or identification by means of photographs;

- (h) a moving image or a still photographed image may be taken of him whenever he attends an identification procedure;
- (i) if the witness was shown photographs, a computerized or artist's composite likeness or a similar likeness or image before the identity of the suspect was known;
- (j) where he changes his appearance before an identification procedure is held, it may not be practicable to arrange another identification procedure on that day or subsequently, and further because of the appearance change, the identification officer may consider alternative methods of identification;
- (k) where he significantly alters his appearance between the request and the consent to an identification procedure, this may be given in evidence if the case comes to trial;
- (l) he or his Attorney-at-law will be provided with details of the description of the suspect as first given by any witness who is to attend the identification procedure; and
- (m) where the image of the suspect, or any composite or sketch of the suspect has been published, broadcast or released to the media by the police for the purposes of recognizing or tracing the suspect, the suspect or his Attorney-at-law shall be allowed to view any such material, provided it is practicable and would not unreasonably delay the investigation.

(2) Where the identification officer explains the matters set out in subsection (1), he shall -

- (a) cause it to be recorded in a written notice and given to the suspect;
- (b) cause the suspect to be given a reasonable opportunity to read the notice;
- (c) request the suspect sign a copy of the notice indicating that he is still willing to take part in an identification procedure;
- (d) retain the signed copy of the notice referred to in paragraph (c) and certify

thereon that the contents of the notice were explained to the suspect; and

- (e) where the Attorney-at-law or representative of the suspect or a Justice of the Peace is present, while the explanation was given, also require that person to sign the notice.

(3) The notice referred to in subsection (2), shall be in the form set out as Form B in the Fourth Schedule.

Identification
procedure for
suspect

12F. (1) Where an identification procedure is to take place, a suspect shall first be offered the option using video medium referred to in section 12C(1)(a).

(2) Notwithstanding the order of priority established under section 12C(1), where it is impractical or circumstances are unsuitable to conduct an identification procedure in the order of priority, the identification officer shall offer the next identification procedure in the order of priority which is reasonably practicable in the circumstances, and shall record in detail, the reasons for so offering.

(3) Where a suspect refuses the identification procedure-

- (a) he shall be asked to state his reasons for refusing and his reasons, if any, for requesting another identification procedure; and
- (b) the identification officer shall record in detail the refusal and the reasons given under paragraph (a).

(4) An identification officer shall, where appropriate and having regard to the order of priority referred to in section 12C, and after considering any reasons given and representations made under subsection (3), shall offer the next identification procedure in the order of priority which is reasonably practicable in the circumstances, and record in detail the reasons for so offering.

Suspect to have a
representative

12G. (1) Where a suspect is involved in an identification procedure, he shall be given every

opportunity to have his Attorney-at-law or his representative present during the identification procedure.

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

(3) Notwithstanding subsection (2), an identification procedure may be conducted before the expiration of the period of notice referred to in that subsection if his Attorney-at-law or representative is present.

(4) Where, after the expiration of the period of notice referred to in subsection (2), the Attorney-at-law or representative of the suspect is not present for an identification procedure, the identification officer shall not conduct the procedure unless a Justice of the Peace is present.

(5) Where a Justice of the Peace is present at the identification procedure he shall, prior to the conduct of the identification procedure, be satisfied that the suspect has consented under sections 12D and 12E to the conduct of the identification procedure.

(6) A Justice of the Peace under subsection (5) shall ensure that –

- (a) he is present during the course of the procedure;
- (b) the identification officer informs the suspect of all matters of which the identification officer is required to inform him under this Act; and
- (c) where necessary, the suspect is cautioned to the effect *that he is not obliged to say anything unless he wishes to do so and that anything he says will be put into writing or otherwise recorded,*

and shall so certify in the form set out as Form C in the Fourth Schedule.

(7) The Justice of the Peace shall record any objections or statements made by the suspect and any unusual occurrences during the course of the identification procedure in the form set out as Form C in the Fourth Schedule.

Identification
parade

12H. (1) An identification parade shall comprise a live lineup of persons which include –

- (a) the suspect and seven other persons who resemble the suspect; or
- (b) two suspects who resemble each other and twelve other persons who resemble the suspect.

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

(3) Where the parade involves the use of a screen, permitting a witness to see the composition of the identification parade without being seen, the identification parade shall be conducted and everything said to, or by, a witness, shall be said in the hearing of the suspect, his Attorney-at-law or representative or a Justice of the Peace.

(4) The identification officer conducting an identification parade shall ensure that-

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

(5) The video recording referred to under subsection (4) shall be admissible in evidence.

Witness in
identification
parade

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

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

(3) Where a member of the parade refuses to comply with a request under subsection (2), the identification officer shall stop the parade and record in detail, the refusal and why the identification parade was stopped.

(4) Where during the course of an identification parade, a suspect indicates to the identification officer that he no longer wishes to participate in the parade, the identification officer shall stop the parade and record in detail, the refusal and why the identification parade was stopped.

Photographs

12J. (1) An identification procedure using photographs shall involve showing a witness still photographed images of the suspect together with similar images of other persons who resemble the suspect.

(2) Where a suspect has been positively identified by a witness, the identification officer shall, in respect of the matter under investigation, take all necessary steps to ensure that all still photographed images used for the identification procedure, are kept securely and the movement of the photographed images are carefully accounted for.

(3) A detailed record of the identification procedure using photographs shall be kept by the identification officer, whether or not an identification of a suspect is made.

(4) A record under subsection (3) shall include –

- (a) anything said by the witness about any identification;
- (b) the details of the conduct of the identification procedure;

- (c) the names of all persons present during the identification procedure; and
- (d) the names of all persons whose photographs were utilized during the identification procedure, if available.

(5) The Commissioner of Police shall ensure that all still photographed images used for an identification procedure are retained indefinitely and are made available, as required for Court proceedings.

(6) An identification officer shall ensure that all still photographed images used in an identification procedure conducted by him are appropriately marked.

Public places

12K. (1) An identification procedure of a suspect in a public place shall be done by a witness from amongst an informal group of persons and may take place in any public place which the suspect may frequent and which would provide an opportunity for the suspect to be seen amongst groups of persons standing, walking or sitting around.

(2) An identification procedure under subsection (1) may be made in a public place, where the suspect is not in police custody or it is impossible or impractical to make use of any other identification procedure.

(3) An identification procedure under subsection (1) may take place either with or without the consent or co-operation of the suspect.

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

(5) The conduct of an identification procedure under this section without the consent of the suspect, may only be done as a last resort and where –

- (a) the suspect is not in custody; and
- (b) the suspect has refused to give his consent or it is impossible or impractical to obtain the consent of the suspect.

Execution of a
confrontation

12L. (1) Where a suspect has refused to consent to any other identification procedure, an identification by means of confrontation may be used and a detailed record shall be made of the refusal by the identification officer .

(2) Where confrontation as a means of identification is to be conducted, the suspect shall be -

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

(b) cautioned by the identification officer to the effect that ***he is not obliged to say anything unless he wishes to do so and that anything he says will be put into writing or otherwise recorded.***

(3) The suspect or his Attorney-at-law, his representative or the Justice of the Peace as the case may be, shall be provided with details of the first description of the suspect, which was given by each witness who is to participate in the confrontation, by the identification officer.

(4) Where any material in the form of an image, composite or sketch of the suspect has been published, broadcast or released to the media by the Police Service for the purpose of recognizing or tracing the suspect, the identification officer shall obtain a copy of the material and allow the suspect or his Attorney-at-law or representative to view the material, provided it is practical and would not unreasonably delay the identification procedure.

(5) A witness shall be informed by the identification officer before a confrontation takes place that-

(a) the suspect he saw, may or may not be the person he is to confront; and

(b) if the person confronted is not the suspect he saw, he should report this to the identification officer.

(6) A confrontation shall be conducted in a police station or other building under the control of, or regularly used by, the Police Service in the normal conduct of their duties, either in a normal room or one equipped with a screen, permitting the witness to view the suspect without himself being seen.

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

INTERVIEWS AND ORAL ADMISSIONS

Voice identification procedure

12M. (1) A voice identification procedure may be conducted where a witness to an offence claims to be able to recognize the voice of the person who committed the offence.

(2) A voice identification parade shall –

(a) comprise a live line up of persons which include the suspect and seven other persons, and whose voice characteristics are similar to those of the suspect; and

(b) be held as soon as is practicable, after the commission of the offence.

(3) A voice identification parade shall involve the use of a screen which prevents the witness from seeing members of the voice identification parade.

(4) Everything said to, or by a witness during a voice identification parade, shall be said in the hearing of the suspect, his Attorney-at-law or representative, or a Justice of the Peace.

(5) The identification officer conducting the voice identification parade shall ensure that –

(a) the voice identification parade is recorded by video recording; and

- (b) the movement of witnesses when entering or exiting the area in which the voice identification parade is being conducted, is recorded by video recording.

(6) The video recording referred to in subsection (5), shall be admissible in evidence.

(7) Each witness to a voice identification parade shall be brought into the parade room one at a time, and no more than one witness shall be in the parade room while the voice identification parade is being conducted.

(8) Before requesting members of a voice identification parade to speak, the identification officer shall –

- (a) inform the witness that the person whose voice he heard at the time of the commission of the offence may or may not be present at the voice identification parade; and
- (b) instruct the witness to the effect that-
 - (i) each member of the voice identification parade shall be identified by number;
 - (ii) he will hear each member speak but he is not to say anything until he has heard all the members speak;
 - (iii) if he wishes, he may request and hear a member of the parade speak again; and
 - (iv) if he recognizes the voice of the person who committed the offence, he shall identify that voice by number.

(9) The identification officer shall, in the hearing of the witness, identify each member of the voice identification parade by number and instruct each member, one at a time, to speak the appropriate words.

(10) Where a witness identifies a person in the voice identification parade by number, the identification officer shall –

(a) ask that person his name and note the name; and

(b) repeat the name to the witness within the hearing of the person identified.

Electronic
recording
statements
suspects

of
of

12N. (1) Subject to subsections (2) to (4), where it is reasonably practicable to do so, a police officer shall record an interview either by video recording or audio recording of any person suspected of, or charged with, committing an offence.

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

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

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

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

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

Register
Interviews

of

12O. (1) The Commissioner of Police shall cause to be established and maintained a Register of Interviews in which shall be recorded the following information:

- (a) reference number;
- (b) name of the suspect;
- (c) number, rank and name of the interviewing officer;
- (d) date, time and place of the interview;
- and

(e) such other information as may be prescribed by the **Minister** by Order.

(2) The Register under subsection (1), shall be a direct reference and shall allow for easy review and audit of the recordings that have been made.

(3) The Register referred to in subsection (1) shall be a record of the fact that a recording has been made of an interview, the name of the suspect, the interviewing officers involved, the time of commencement and completion of the interview, and any other matters deemed necessary.

Interview using
recording
equipment

12P. (1) Where a video recording or audio recording commences, the interviewing officer shall first state-

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

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

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

(3) Where the interviewee, who is a suspect, has not been charged or informed that he may be prosecuted, he shall be cautioned ***to the effect that he is not obliged to say anything unless he wishes to do so and that anything he says will be put into writing or otherwise recorded and may be given in evidence.***

(4) Where the suspect has been charged or informed that he may be prosecuted, he shall be cautioned

to the effect *that he is not obliged to say anything unless he wishes to do so and that anything he says will be put into writing or otherwise recorded and may be given in evidence.*

(5) After the conclusion of the recording, the suspect shall be offered the opportunity to review his recorded statement, and any clarification, addition or alteration he makes shall also be recorded.

(6) An entire interview including the taking and reading back of any statement, shall be recorded by the interviewing officer.

Suspect objects to interview being visually recorded

12Q. (1) Where a suspect raises objections to an interview being visually recorded either at the outset or during the interview or during a break in the interview, the objections of the suspect shall be recorded on the recording media by the interviewing officer.

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

Requirements of interviewing officer at conclusion of interview

12R. (1) At the conclusion of an interview, the interviewing officer shall-

- (a) make a note in his pocket diary and the Station Diary of the fact that –
 - (i) the interview has taken place and has been recorded;
 - (ii) the time, duration and date of the interview; and
 - (iii) the identification markings of the master copy of the recording media; and
- (b) ensure that the required information is entered into the Register of interviews.

(2) An interviewee or his Attorney-at-law or representative shall be given a copy of the recording of the interview within seven days of the interview and shall be

provided with a copy of the transcript of the recording, if one is made.

Making of copies

12S. Where an interview is recorded by an interviewing officer, he shall –

- (a) place his marking on it, label it as a master copy and invite the suspect and his Attorney-at-law or representative to sign it;
- (b) make two copies of the master copy in the presence of the suspect, his Attorney-at-law or representative and give one copy to the suspect and one to the investigating officer (hereinafter referred to as the “working copy”); and
- (c) seal the master copy in the presence of the suspect and his Attorney-at-law or his representative.

Master copy

12T. (1) The interviewing officer shall submit the sealed and marked master copy to a senior police officer of the rank of Assistant Superintendent or higher rank, who will be responsible for keeping the master copy in safe custody.

(2) The senior officer under subsection (1), shall make arrangements to ensure that the master copy is kept securely and its movements fully accounted for, whether or not any Court proceedings are commenced in respect of the interviewee whose interview was recorded.

(3) Subject to sections 12U and 12V, the seal of a master copy may be broken by the senior police officer under subsection (1), if it becomes necessary to obtain a copy of the master copy because the working copy –

- (a) is destroyed;
- (b) can no longer be copied; or
- (c) is incapable of being used to review the interview.

Breaking seal of a master copy required for criminal trial or

12U. (1) No person shall break the seal of a master copy of the recording, unless it is done in accordance with sections 12T to 12W.

appeal
proceedings

(2) Where it becomes necessary to access a master copy which is required for the purposes of a criminal trial or criminal appeal proceedings, the seal of the master copy shall be broken by the senior officer referred to in section 12T, in the presence of a representative of the Director of Public Prosecutions and where possible, the interviewee, his Attorney-at-law or representative.

(3) An interviewee who was the subject of an interview or his Attorney-at-law or representative, shall be informed of the intention under subsection (1), to break the seal of the master copy and shall be given a reasonable opportunity to be present.

(4) Where an interviewee, who was the subject of an interview or his Attorney-at-law or representative is present at the breaking of a seal under subsection (3), either of them shall be invited to reseal the master copy and sign the seal.

(5) Where an interviewee who was the subject of an interview or his Attorney-at-law or representative refuses to reseal the master copy and sign the seal, or neither is present, the representative of the Director of Public Prosecutions shall be invited to reseal the master copy and sign the seal.

(6) Where the seal of a master copy is broken and a copy made of the master copy and the master copy is resealed, the senior police officer responsible for keeping the master copy in safe custody shall make a written record of the procedure followed, including the date, time and place and all persons present when the seal of the master copy was broken and when the master copy was resealed.

(7) Recordings used under this section shall be retained up to and until the final determination of the court matters in which the recordings are to be used.

Breaking seal of
master copy
other than for
criminal trial or
appeal
proceedings

12V. (1) Where it becomes necessary to break the seal of a master copy pursuant to section 12T(3), the seal shall be broken by the senior officer referred to in section 12T responsible for keeping the master copy in safe custody.

(2) An interviewee, his Attorney-at-law or representative shall be informed of the intention to break the seal of the master copy under subsection (1), and be given a reasonable opportunity to be present.

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

(4) Where the interviewee, his Attorney-at-law or representative is not present when the master copy is broken, the seal shall be broken in the presence of a Justice of the Peace who shall also be invited to reseal the master copy and sign the seal.

(5) Recordings used under this section shall be retained for a minimum of ten years.

Suspect's
presence
required

not

12W. Notwithstanding sections 12U and 12V, the suspect who was the subject of the interview need not be given an opportunity to be present or the opportunity to be represented by his Attorney-at-law or representative at the breaking of the seal of the master copy where-

- (a) it is necessary to break the seal of the master copy and view or listen to the recording, for the proper and effective further investigation of the original offence or the investigation of some other offence; or
- (b) the investigating officer has reasonable grounds to suspect that allowing an opportunity might prejudice any such investigation on criminal proceedings which may be brought as a result, or endanger any person.

Statement of
suspect or
witness still
admissible even
if not recorded

12X. (1) Where a video recording or audio recording of the statement of a suspect was not made, the statement of the suspect shall still be admissible if –

- (a) it was not reasonably practicable in the circumstances to make a video or audio recording of the interview;

- (b) the investigating officer tried in good faith to record the interview but was unable to do so because of equipment malfunction or power outage;
- (c) the suspect made a spontaneous statement outside the context of an interview; or
- (d) the suspect refuses to speak, if recorded, provided that the refusal itself is recorded either *via* audio or video recording, or in writing.

(2) Where a witness refuses to speak if recorded, he shall be -

- (a) advised, that despite his refusal, anything that he has said or given in writing, may be adduced in evidence against him at trial; and
- (b) given a reasonable opportunity to consult an Attorney-at-law with respect to the possible effects of his refusal

Oral admission

12Y. (1) Where a suspect makes an oral admission, an investigating officer investigating the matter shall immediately note in his pocket diary or in the Station Diary any oral admission made by the suspect to him.

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

- (a) be read to the suspect who shall also be asked to sign the note; and
- (b) be signed by a police officer senior in rank to the investigating officer.

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

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

(5) A note taken under subsection (4), shall -

- (a) be read to the suspect who shall also be asked to sign it; and
- (b) be signed by a police officer senior in rank to the investigating officer.

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

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

SPECIAL MEASURES

Vulnerable
witnesses and
special measures
accorded to them

12Z. (1) Where in any criminal proceedings, an application is made by a party or on a motion of the Court, the Court may issue a direction that a special measure or a combination of special measures shall be used for the giving of evidence by a witness.

(2) Where directions are given by a Court under subsection (1), the Court shall be satisfied that-

- (a) the witness is a vulnerable witness; and
- (b) the special measures available or any combination of them would be likely to improve the quality of evidence given by the witness.

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

- (a) the age or maturity of the witness;
- (b) the physical, intellectual, or psychiatric disability of the witness;
- (c) any trauma suffered by the witness;
- (d) the fear of intimidation by the witness; and
- (e) the witness being a complainant in a sexual proceeding or matter.

Closed
proceedings

12AA. (1) Where a special measure is required to protect the identity of a witness, or to protect a witness from being intimidated by the presence of other persons in the courtroom, closed proceedings shall be implemented.

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

(3) The Court may also, where it deems appropriate, issue a special measure direction that the witness, while giving testimony or being sworn in Court, be prevented by means of a screen or other arrangement from seeing the accused.

(4) The screen or other arrangement referred to under subsection (3) shall not prevent the witness from seeing and being seen by –

- (a) the Judge and jury;
- (b) Attorneys-at-law acting in the proceeding; and
- (c) any interpreter or other person appointed to assist the witness.

Support persons
and devices

12AB. (1) Where criminal proceedings are initiated and a child, a person with mental or physical disability or another vulnerable person is a witness, support persons shall be provided for such individuals.

(2) The duty of the support persons shall be to ensure that those persons referred to in subsection (1) are comfortable and secure in giving the best quality of evidence.

(3) Where necessary, a vulnerable witness shall be provided with, or allowed to use devices to assist him to overcome any disability, disorder or impairment that

may affect the ability of the witness to hear or understand questions and communicate answers.

Video link

12AC. (1) A Court may allow for video links to be utilized where it considers it appropriate.

(2) Notwithstanding subsection (1), the suspect, witness or their Attorneys-at-law on their own motion, may apply to the Court to permit the use of video links where they consider it necessary.

(3) In deciding whether to allow the use of video links in a matter before the Court, the Court shall be guided by the following:

- (a) whether or not it is reasonably practicable to secure the physical attendance of the witness at the proceedings –
 - (i) having regard to the expense that would be incurred in order to bring the witness to attend the proceedings;
 - (ii) any logistical difficulties in the witness attending the proceedings; and
 - (iii) any other factors which the Court considers relevant; and
- (b) whether the use of video link is appropriate in the interests of justice.

(4) In determining whether the use of video link is appropriate in the interests of justice under subsection (1), the Court shall consider the following:

- (a) the views expressed by, or submissions made on behalf of the witness;
- (b) the nature and importance of the evidence to be given;
- (c) whether the video link would be likely to facilitate the availability of, or improve the quality of evidence;

(d) whether the video link may inhibit the evidence; and

(e) any other matter the Court considers relevant.

(5) Where a vulnerable witness is a child, the Court may, where it deems it appropriate in the interests of justice, allow the use of video link as a special measure, unless -

(a) the Court considers that the special measures would not be likely to improve the quality of the evidence; or

(b) the child requests that special measures not be made and the Court is satisfied that the quality of the evidence would not be diminished as a result.

(6) For the purposes of subsection (3), the Court, in deciding whether to allow evidence of a child witness *via* video link, shall take into account –

(a) the age and maturity of the child;

(b) the ability of the child to understand what is involved in giving evidence; and

(c) any other matters that the Court considers relevant.

(7) Subject to subsection (6), the Court under this section may allow an accused person to give evidence *via* video link.

(8) A Court under this section may permit the use of video link, but is not limited to, the following circumstances:

(a) to facilitate administrative procedures where the accused is held on remand pending his next Court appearance and evidence will not be given during that period; and

(b) where the trial is proceeding and the Court is satisfied that it is in the interests of the administration of justice for the

accused to appear before the Court by means of a video link.

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

(10) Where a witness is in a foreign State and gives evidence by means of a live video link in proceedings that are conducted in Trinidad and Tobago, the witness shall not be compelled to give any evidence which he could not be compelled to give in criminal proceedings in the foreign State, or in criminal proceedings in Trinidad and Tobago.

(11) The Court, in determining whether to allow video evidence under this section, by an accused person *via* video link shall take into consideration the following:

- (a) the risk that the personal security of a particular person or persons, including the accused, may be endangered if the accused appears in the courtroom or any other place where the Court is sitting;
- (b) the risk of the accused escaping, or attempting to escape from custody when attending the courtroom or any other place where the Court is sitting;
- (c) the behaviour of the accused when appearing before a Court in the past;
- (d) the conduct of the accused while in custody, including the conduct of the accused during any period in the past where the accused was being held in custody in a prison;
- (e) the potential for disruption as a result of the participation of the accused in a rehabilitation or educational programme, if the accused was to be transported to, and appear in, the courtroom or any other place where the Court is sitting;

(f) safety and welfare considerations in transporting the accused to the courtroom or any other place where the Court is sitting;

(g) the efficient use of available judicial and administrative resources; and

(h) any other relevant matter raised by a party to the proceeding or other applicant for the making of the direction.

Witness
Anonymity
Orders

12AD. (1) Where it is necessary that the identity of a witness be concealed from the accused and the public so as to protect the witness who fears for his life and that of his relatives, the Court may grant a Witness Anonymity Order.

(2) A Witness Anonymity Order referred to in subsection (1), shall include measures for securing one or more of the following:

- (a) that the name of the witness and other identifying details may be withheld or removed from materials disclosed to any party to the proceedings;
- (b) that the witness may use a pseudonym;
- (c) that the witness is not asked questions of any specified description that might lead to the identification of the witness;
- (d) that the witness is screened to any specified extent; and
- (e) that the voice of the witness is subjected to modulation to any specified extent.

(3) Notwithstanding subsection (2)(e), the voice of the witness shall not be modulated to such an extent that the natural voice of the witness cannot be heard by –

- (a) the Judge or Magistrate; or
- (b) other members of the Court and the jury, where applicable.

(4) A prosecutor, defendant or accused may, in relation to a witness, make an application to the Court, for a Witness Anonymity Order.

(5) Before a Court grants a Witness Anonymity Order under subsection (1), the Court shall consider whether –

- (a) the proposed Order is necessary to-
 - (i) protect the safety of the witness or another person;
 - (ii) prevent any serious damage to property; or
 - (iii) prevent real harm to the public interest;
- (b) having regard to all the circumstances, the effect of the proposed Order would be consistent with the defendant receiving a fair trial;
- (c) the importance of the testimony of the witness is such that the witness ought to testify in order to preserve the interests of justice; and
- (d) the witness would not testify if the proposed Order was not made or whether there would be real harm to the public interest if the witness was to testify without the proposed Order being made.

(6) In deciding whether the conditions under subsection (5) are met, the Court shall have regard to –

- (a) the general right of a defendant or accused in criminal proceedings to know the identity of a witness in the proceedings;
- (b) the extent to which the credibility of the witness concerned would be a relevant factor when the weight of his evidence is to be assessed;
- (c) whether evidence given by the witness might be the sole or decisive evidence implicating the defendant;
- (d) whether the evidence of the witness could be properly tested without his identity being disclosed;

- (e) whether the fear of giving live testimony by an intimidated witness is well-grounded and that the risk of intimidation justifies it;
- (f) whether there is any reason to believe that the witness has a tendency to be dishonest, or has any motive to be dishonest in the circumstances of the case;
- (g) whether it would be reasonably practicable to protect the witness by any means other than by making a Witness Anonymity Order specifying the measures that are under consideration by the Court; and
- (h) whether a Witness Anonymity Order is necessary and in the interest of justice, and whether such an order will impact negatively on a defendant receiving a fair trial.

(7) The Court may discharge or vary a Witness Anonymity Order which it previously made if it appears appropriate for it to do so in light of subsections (5) and (6).

(8) The Judge in his summing up, shall indicate to the jury that the fact that a Witness Anonymity Order had been made, should not be held against the defendant.

(9) The Court shall be prevented from granting an Order under this section if such an Order will have the effect of screening the witness to such an extent that the witness cannot be seen by –

- (a) the Judge or Magistrate; and
- (b) other members of the Court, and the jury, where applicable.

Special measures
not to prejudice
accused

12AE. Where any of the special measures proposed in sections 12Z to 12AD are utilized and the particular proceedings require a trial by jury, the Court shall give the jury any warning considered necessary to ensure that there is no prejudice to the accused from the fact that an Order was made for the use of a special measure.

Obligation to
record witness
statements

12AF. (1) Subject to subsections (2) to (5), where it is reasonably practicable to do so, a police officer shall record by video recording or audio recording a statement given by a witness in relation to criminal proceedings.

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

(3) Where it is not reasonably practicable to record the statement by audio recording, the statement shall be recorded in writing.

(4) Where a video recording of a statement is being made, the camera shall be situated so as to ensure coverage of as much as the surroundings as is practicably possible, whilst the statement is being made.

(5) After the conclusion of the recording, the witness shall be offered the opportunity to review his recorded statement, and any clarification, addition or alteration he makes shall also be recorded.

(6) A police officer need not record a statement of a formal witness by video recording or audio recording.

Closed circuit
television

12AG. A video recording recorded by means of a closed circuit television camera (CCTV) shall be admissible in evidence.

Video recorded
evidence
Chap. 7:02

12AH. (1) Subject to the Audio Visual Recording Rules, a video recording of the whole or part of a witness statement shall be admissible in evidence.

(2) Subject to sections 12M to 12X, a video recording of the whole or part of an interview shall be admissible in evidence in chief.

(3) A video recording may also be made of cross-examination or re-examination and the whole or part

of such recording shall be admissible as the evidence of a witness on cross examination or re-examination.

(4) Where video recorded evidence is used, all such evidence shall be admissible to the same extent and have the same effect as if it were evidence given in direct oral testimony.

(5) Where evidence by way of video recording is allowed, this shall not be used as a bar to the same witness, where appropriate, being allowed to give oral testimony.

(6) Where oral testimony as referred to under subsection (5) is given, the witness shall not be asked to address any issue in examination in chief, cross-examination or re-examination that in the Court's estimation has already been adequately addressed in the recorded examination in chief, cross-examination or re-examination.

Offences

12AI. Any person who –

(a) possesses, plays or offers to supply a recording of an interview under this Part to any person, unless so authorized under this Part; or

(b) copies, tampers with, modifies, erases or publishes a recording unless duly authorized by this Part,

commits an offence and is liable upon summary conviction to a fine of one million dollars and to imprisonment for three years.

Regulations

12AJ. The Minister may make Regulations –

(a) prescribing the procedure to be followed, the type of equipment to be used, and the arrangements to be made where a person is to use audio visual-recording medium;

(b) prescribing the types of photographs, screens and support devices;

- (c) prescribing forms for the purposes of this Part; and
- (d) providing for any other matters contemplated by this Part, necessary for its administration, or necessary for giving its full effect.

Passed in the House of Representatives this day of , 2016.

Clerk of the House

I confirm the above.

Speaker

Passed in the Senate this day of , 2016.

Clerk of the Senate

I confirm the above.

President of the Senate

