

THE POLICE AND CRIMINAL EVIDENCE BILL
(No. of 2012)

Explanatory Memorandum

1. The main objects of this Bill are to –
 - (a) bring together in one enactment, subject to certain exceptions, the provisions which relate to the exercise, by the police and other investigating or enforcement officers, of the powers to stop, enter, search, seize, arrest and detain and to the treatment and questioning of detainees;
 - (b) improve the statutory regulation of provisional informations and spent convictions;
 - (c) require a party to disclose his case to the Court and to the other parties in a criminal case; and
 - (d) set out in one enactment the main provisions relating to evidence in criminal proceedings.

2. The Bill sets out the provisions referred to in subparagraph (a) of paragraph 1 so as to better guarantee the citizen's constitutional rights to liberty, protection of property, freedom of movement and protection of the law. The Bill accordingly limits the power of a private person to make an arrest.

3. The Bill also –
 - (a) increases the penalty for refusing to give evidence;
 - (b) gives the Court a general power to exclude unfair evidence;
 - (c) makes better provision for the competency and compellability of a person who is married to a person charged to give evidence;
 - (d) affords better protection to a person charged in relation to witnesses' previous statements;
 - (e) makes it an offence to interfere with witnesses or potential witnesses in criminal matters;
 - (f) provides for the enforcement of the rights of victims of offences;

- (g) makes statutory provision to regulate the admissibility of confessions; and
- (h) no longer requires the Courts to refer to the Judges' Rules.

Y. N. VARMA
Attorney-General

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A BILL

To prescribe the procedures and practices to be followed by police officers and their investigating and enforcement officers in the exercise of their powers, to provide for disclosure of each party's case in criminal proceedings and to set out the main provisions relating to evidence in criminal cases

ENACTED by the Parliament of Mauritius, as follows –

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Police and Criminal Evidence Act 2012.

2. Interpretation

(1) In this Act –

“arrestable offence” means a crime or a misdemeanour which is punishable by imprisonment;

“enforcement officer” means a public officer, other than a police officer, or an officer of a statutory corporation who, under any other enactment, is empowered to exercise the powers of a police officer referred to in this Act;

“excluded material” means –

- (a) personal records which a person has acquired or created in the course of any trade, business, profession or other occupation or for the purposes of any paid or unpaid office and which he holds in confidence;
- (b) human tissue or tissue fluid which has been taken for the purposes of diagnosis or medical treatment and which a person holds in confidence; and
- (c) journalistic material which a person holds in confidence and which consists of documents or other records;

“instrumentality” means any property used or intended to be used in any manner to commit an offence;

“intimate sample” means –

- (a) a sample of blood, semen or any other tissue fluid, urine or pubic hair;
- (b) a dental impression;
- (c) a swab taken from any part of a person’s genitals or from a person’s body orifice other than the mouth;

“intimate search” means a search which consists of the physical examination of a person’s body orifices other than the mouth;

“non-intimate sample” means –

- (a) a sample of hair other than pubic hair;
- (b) a sample taken from a nail or from under a nail;
- (c) a swab taken from any part of the body other than an intimate sample;

“investigating officer” means a public officer, other than a police officer, or an officer of a statutory corporation whose functions or duties include the prevention, detection or investigation of offences;

“items subject to legal privilege” –

(a) means –

- (i) communications between a professional legal adviser and a client made in connection with the giving of legal advice;
- (ii) communications between a professional legal adviser and a client or between the adviser or a client and any other person made in connection with or in contemplation of legal proceedings; and
- (iii) items enclosed with or referred to in such communications when they are in the possession of a person who is entitled to such possession; but

(b) does not include items held with the intention of furthering a criminal purpose;

“journalistic material” means material acquired or created for the purposes of journalism which is in the possession of a person who acquired it or created it for the purposes of journalism;

“material” includes any document, object or thing or electronic or digital record;

“offence against property” means an offence under section 40, 41 or 301 to 369 of the Criminal Code;

“offensive weapon” has the same meaning as in the Public Gatherings Act;

“personal records” means documentary or other records concerning an individual who can be identified from them and relating to –

- (a) his physical or mental health;
- (b) spiritual counselling or assistance given to him; or
- (c) other counselling or assistance given to him for his personal welfare;

“proceeds” means any property or economic advantage derived or obtained, directly or indirectly, through or in connection with the commission of an offence;

“prohibited article” means –

- (a) an offensive weapon; or
- (b) an article –
 - (i) made or adapted for use in the course of or in connection with an offence against property; or
 - (ii) intended by the person having it with him for such use by him or by some other person;

“prosecution material” means material which is in the prosecutor’s possession or is available to him for the purpose of being used in connection with the prosecution’s case against a party charged;

“public place” has the same meaning as in the Public Gatherings Act;

“sexual offence” means an offence against –

- (a) section 249 of the Criminal Code; or
- (b) section 14 or 15 of the Child Protection Act;

“special procedure material” means –

- (a) material, other than excluded material or items subject to legal privilege, in the possession of a person who –
 - (i) acquired or created it in the course of any trade, business, profession or other occupation or for the purpose of any paid or unpaid office; and
 - (ii) holds it subject to –
 - (A) an express or implied undertaking to hold it in confidence; or
 - (B) a restriction on disclosure or an obligation of secrecy contained in any other enactment;

(b) journalistic material other than excluded material;

“spouse” –

(a) means a person who is civilly or religiously married, in accordance with the Civil Status Act; but

(b) does not include a person who has been, but is no longer, married;

“vehicle” includes vessel and aircraft.

(2) For the purposes of subsection (1) –

(a) a person holds material, other than journalistic material, in confidence where he holds it subject to –

(i) an express or implied undertaking to hold it in confidence; or

(ii) a restriction on disclosure or an obligation of secrecy contained in any other enactment;

(b) a person holds journalistic material in confidence where –

(i) he holds it subject to such an undertaking, restriction or obligation; and

(ii) it has been continuously held subject to such an undertaking, restriction or obligation since it was first acquired or created for the purposes of journalism.

3. Application of Act

(1) This Act is in addition to, and not in derogation from, the provisions of the enactments set out in the first column of the First Schedule which are specified in the second column of that Schedule.

(2) (a) Every police officer engaged in the detection or investigation of an offence shall take all reasonable steps to ensure that a victim –

(i) is treated with fairness, dignity and respect;

(ii) has his complaint investigated with celerity;

(iii) is kept informed of developments in the investigation;

- (iv) is protected from discrimination and harassment;
- (v) is promptly given back any personal property seized as evidence when it is no longer required; and
- (vi) is provided with such proper assistance as he may require.

(b) In paragraph (a) –

“victim” means a person who has suffered physical, mental or emotional injury, economic loss or substantial impairment of his human or fundamental rights as a result of the commission of an offence.

(3) (a) This Act shall apply to an enforcement officer and an investigating officer as it applies to a police officer.

(b) Every enforcement officer or investigation officer shall, in the exercise of any power vested by this Act in a police officer, follow and comply with procedures and practices set out in this Act.

PART II – INVESTIGATIONS

Sub-Part I – Power to Stop and Search

4. Power to stop and search persons and vehicles

(1) Where a police officer has reasonable grounds to suspect that he will find articles that are proceeds or an instrumentality of an offence against property or prohibited articles, he may –

(a) in a public place –

- (i) subject to subsection (3), search any person or vehicle and anything which is in or on a vehicle; and
- (ii) detain a person or vehicle for the purpose of such search;

(b) where a person or a vehicle is on land which is within the curtilage of private premises, exercise a power referred to in paragraph (a) where he has reasonable grounds to believe that –

- (i) the person or, as the case may be, the person in charge of the vehicle is not a resident or occupier of the premises; and

- (ii) the person or, as the case may be, the vehicle is not on the land with the express or implied permission of a resident or occupier of the premises.

(2) Where, in the course of a search conducted in accordance with subsection (1), a police officer discovers an article which he has reasonable grounds to suspect to be proceeds or an instrumentality of an offence against property or a prohibited article, he may seize the article.

(3) A police officer may not, for the purposes of subsection (1)(a), require a person to remove any clothing other than an outer coat, a jacket, gloves, head gear, footwear or an item worn to conceal identity.

(4) Where a police officer has reasonable grounds to believe that it is necessary to require a person to remove any other item of clothing, this must be done out of public view.

5. Conduct of search

(1) Where a police officer, in the exercise of his powers under section 4 or any other enactment which authorises the search of a person or a vehicle without making an arrest, detains a person or a vehicle, he shall –

- (a) not conduct a search where it subsequently appears to him that no search is required or a search is impracticable;
- (b) except in the case of the search of an unattended vehicle, take reasonable steps before he starts the search to bring to the attention of the person or, as the case may be, the person in charge of the vehicle –
 - (i) where he is not in uniform, documentary proof that he is a police officer;
 - (ii) his name and status in the Police Force; and
 - (iii) the object of the search and the grounds for making it; and
- (c) not detain the person or vehicle for the search for longer than such time as is reasonably required to permit the search to be carried out.

(2) (a) Where a police officer has completed the search of an unattended vehicle or of anything in or on it, he shall leave a notice –

- (i) stating that he has made the search; and
- (ii) giving his name and status in the Police Force.

(b) A notice under paragraph (a) shall be left by the police officer inside the vehicle unless it is not reasonably practicable to do so without damaging the vehicle.

6. Record of search

(1) Where a police officer has carried out a search in the exercise of a power referred to in section 4, he shall make a record of it as soon as is reasonably practicable.

(2) The record of a search shall –

- (a) include a note of the name or a description of the person searched or, as the case may be, a description of the vehicle; and
- (b) state –
 - (i) the date, time and place where it was made;
 - (ii) the object of the search and the grounds for making it; and
 - (iii) whether anything, and if so, what was found.

(3) Where a person who was the subject of a search or, as the case may be, the owner or person in charge of a vehicle asks for a copy of a record made under this section not later than 6 months after the completion of the search, he shall be entitled to receive one.

7. Road blocks

(1) In this section –

“road block” means the stopping of all motor vehicles or of motor vehicles selected by any criterion for one of the purposes set out in subsection (2)(a).

(2) (a) Subject to paragraph (b), a police officer not below the rank of Superintendent may authorise the conduct of a road block for the purpose of ascertaining whether a motor vehicle is carrying a person who –

- (i) has committed, intends to commit or is a witness to an arrestable offence; or
 - (ii) is unlawfully at large.
- (b) An authorisation granted under paragraph (a) shall specify –
- (i) the precise locality in which the road block is to take place;
 - (ii) the period, not exceeding 5 days, during which it may continue; and
 - (iii) whether it will be continuous or conducted at specified times during that period.

(3) (a) A police officer below the rank of Superintendent may authorise a road block as a matter of urgency where it appears to him that it is required for one of the purposes specified in subsection (2)(a).

(b) A police officer who grants an authorisation under paragraph (a) shall, as soon as is reasonably practicable, cause a police officer, of the rank of Superintendent or above, to be so informed, who shall forthwith determine whether or not the road block is to continue.

(4) Nothing in this section shall affect the exercise by a police officer of a power to stop a motor vehicle for a purpose other than one specified in subsection (2)(a).

Sub-Part II – Power of Entry, Search and Seizure

A – Search warrant

8. Authorisation by Magistrate to enter and search premises

(1) A Magistrate may issue a warrant authorising a police officer to enter and search any premises or set of premises where, on application made to him, he is satisfied that there are reasonable grounds to believe that –

- (a) an arrestable offence has been, or is reasonably suspected to have been, committed;
- (b) there is material on the premises which is likely to be of substantial value, by itself or together with other material, to the investigation of the offence;

- (c) the material is likely to be admissible in evidence at a trial for the offence;
 - (d) the material does not consist of or include any items subject to legal privilege, excluded material or special procedure material; and
 - (e) one of the conditions specified in subsection (4) applies to the premises.
- (2) A warrant issued pursuant to subsection (1) may be –
- (a) a specific premises warrant in respect of one or more set of premises specified in the application for the warrant; or
 - (b) an all premises warrant in respect of any premises occupied or controlled by a person specified in the application, including such sets of premises as are so specified.
- (3) Where a Magistrate is requested to issue an all premises warrant, he shall be satisfied that –
- (a) there are reasonable grounds to believe that it is necessary to search premises which are not specified in the application in order to find material referred to in subsection (1)(b); and
 - (b) it is not reasonably practicable to specify in the application all the premises which a person occupies or controls.
- (4) The conditions referred to in subsection (1)(e) are that –
- (a) it is not practicable to communicate with a person entitled to grant entry to the premises;
 - (b) it is not practicable to communicate with a person entitled to grant access to the material;
 - (c) entry to the premises will not be granted unless a search warrant is produced; or
 - (d) the purpose of a search may be frustrated or seriously prejudiced unless a police officer can secure immediate entry to the premises.
- (5) Where a Magistrate is satisfied that it is necessary to authorise entry and search on more than one occasion to achieve the purpose for which he issues

the warrant, he may authorise an unlimited number of entries or a number of entries limited to a maximum.

(6) A police officer may seize and retain anything for which a search has been authorised under this section.

9. Access to excluded or special procedure material

(1) A Judge may, where, on application made to him, he is satisfied that there are reasonable grounds to believe that –

- (a) an arrestable offence has been, or is reasonably suspected to have been, committed;
- (b) there is material on any premises which consists of or includes excluded or special procedure material which is likely to be of substantial value, by itself or together with other material, to the investigation of an offence and to be admissible in evidence at a trial for the offence;
- (c) other methods of obtaining the material have been tried without success or have not been tried because it appeared that they were bound to fail; and
- (d) it is in the public interest that access to the material should be given, having regard to the benefit likely to accrue to the investigation and the circumstances in which the person in possession of the material holds it,

after hearing the person who appears to be in possession of the material, order him to produce the material to a police officer or give the police officer access to it not later than 5 days from the date of the order.

(2) Where notice of an application for an order under subsection (1) has been given to a person, he shall not conceal, destroy, alter or dispose of the material to which the application relates except with leave of a Judge or the written authorisation of a police officer until the Judge has disposed of the application or he has complied with the order, whichever occurs earlier.

(3) Where an order under subsection (1) has not been complied with and one of the conditions specified in section 8(4) applies to the premises referred to in the application for the order, the Judge may, on application made to him, authorise a police officer to enter and search the premises or set of premises.

(4) A police officer may seize and retain anything for which a search has been authorised under this section.

10. Issue and execution of search warrant

(1) A police officer who makes an application for a warrant under section 8(1) or 9(3) or an order under section 9(1) shall answer on oath any question which the Judge or Magistrate puts to him.

(2) A warrant may authorise one or more specified persons to accompany a police officer who is executing it and a person so authorised shall have the same powers as the police officer whom he accompanies in respect of the execution of the warrant and the seizure of anything to which the warrant relates.

(3) Entry and search under a warrant must be –

(a) with one month from the date of its issue; and

(b) at a reasonable hour unless it appears to the police officer that the purpose of the search may be frustrated by entry at a reasonable hour.

(4) Where the occupier of premises which are to be entered, or some other person who appears to be in charge of the premises is present, the police officer shall –

(a) identify himself to the person and, if not in uniform, produce to him documentary evidence that he is a police officer; and

(b) supply to the person a copy of the warrant.

(5) A police officer executing a warrant shall endorse it with a statement specifying whether the material sought was found and whether any article has been seized and retained.

(6) Where a warrant has been executed, the police officer shall cause it to be returned to an officer of the Court from which it was issued.

B – Entry and search without warrant

11. Entry for arrest or preventing damage or injury

(1) A police officer may, subject to this section, enter and search any premises for the purpose of –

(a) executing a warrant of arrest issued in connection with or arising out of criminal proceedings;

- (b) executing a warrant of commitment to stand trial;
- (c) arresting a person for an arrestable offence;
- (d) recapturing a person who is unlawfully at large; or
- (e) saving life or limb or preventing serious damage to property.

(2) A power of entry and search conferred by subsection (1) shall, except for the purpose specified in subsection (1)(e) –

- (a) only be exercisable where the police officer has reasonable grounds to believe that the person whom he is seeking is on the premises; and
- (b) be limited, where premises consist of 2 or more separate dwellings, to the dwelling in which the police officer has reasonable grounds to believe that the person whom he is seeking may be and to any part of the premises which the occupiers use in common.

(3) Nothing in this section shall affect a power of entry to deal with or prevent a breach of the peace.

12. Entry and search after arrest

(1) Subject to this section, a police officer may enter and search any premises occupied or controlled by a person who is under arrest for an arrestable offence where he has reasonable grounds to suspect that there is, on the premises, evidence, other than items subject to legal privilege, that relates to –

- (a) that offence; or
- (b) some other arrestable offence which is connected with or similar to that offence.

(2) Except where the presence of a person at a place other than a police station is necessary for the effective investigation of the offence, a police officer below the rank of Inspector shall not exercise a power under subsection (1) unless an officer of the rank of Inspector or above has authorised it.

(3) Where a police officer exercises a power under subsection (1), without the authorisation of an officer of the rank of Inspector or above, he shall inform such an officer of the fact as soon as is reasonably practicable.

(4) A police officer who authorises a search or is informed of a search shall make a record in writing of the grounds of the search and the nature of the evidence that was sought.

C – Seizure

13. Power of seizure

Where a police officer is lawfully on any premises, he may –

- (a) seize anything which is on the premises where he has reasonable grounds to believe that –
 - (i) it has been obtained in consequence of the commission of an offence;
 - (ii) it is evidence in relation to an offence which he is investigating or any other offence; or
 - (iii) it is necessary to seize it in order to prevent it from being concealed, lost, altered, damaged or destroyed; or
- (b) require any information stored in any electronic form and is accessible from the premises to be produced in a form in which it can be taken away and in which it is visible and legible or from which it can readily be produced in a visible and legible form where he has reasonable grounds to believe that any of the 3 conditions specified in paragraph (a) applies to the information.

14. Access and copying

(1) A police officer who seizes anything in the exercise of a power conferred by section 13 shall, if so requested by a person showing himself –

- (a) to be the occupier of the premises on which it was seized; or
- (b) to have had custody or control of it immediately before the seizure,

provide that person with a record of what he seized.

(2) Subject to subsection (4), where a request for permission to be granted access to anything which has been seized by a police officer and retained for the purpose of an investigation is made to the police officer in charge of the investigation by a person who had custody or control of the thing immediately before it was

seized, the officer shall allow the person who made the request access to it under the supervision of another police officer.

(3) Subject to subsection (4), where a request for a photograph or a copy of any such thing is made to the police officer in charge of the investigation by a person who had custody or control of the thing immediately before it was seized, the officer shall allow the person access to it under the supervision of another police officer for that purpose or cause it to be photographed or copied.

(4) An officer shall not be under a duty to grant access to, or to supply a photograph or copy of, anything under subsection (2) or (3) where he has reasonable grounds to believe that to do so would prejudice –

- (a) the investigation;
- (b) the investigation of an offence other than the offence in relation to which it was seized; or
- (c) any criminal proceedings which may be brought as a result of an investigation referred to in paragraph (a) or (b).

15. Retention

(1) Subject to this section, anything which has been seized by a police officer or taken away, following a requirement made pursuant to paragraph (b) of section 13, may be retained for so long as is necessary in all the circumstances.

(2) Anything seized for the purposes of an investigation may be retained –

- (a) for use as evidence at a trial for an offence;
- (b) for forensic examination or other investigation in connection with an offence; or
- (c) to establish its lawful owner where the police officer has reasonable grounds to believe that it has been obtained in consequence of the commission of an offence.

(3) Nothing seized on the ground that it may be used to –

- (a) cause physical injury to a person;
- (b) damage property;
- (c) interfere with evidence; or

- (d) assist in escaping from police or detention or lawful custody,

may be retained where the person from whom it was seized is no longer in police detention or the custody of a Court or has been released on bail.

- (4) Nothing may be retained for a purpose referred to in subsection (2)(a) or (b) where a photograph or a copy would be sufficient for that purpose.

Sub-Part III – Arrest

16. Arrest without warrant by police officer

(1) Subject to subsections (2) and (3), a police officer may, without a warrant, arrest anyone –

- (a) who is about to commit or in the act of committing an offence;
- (b) whom he has reasonable grounds to suspect to be about to commit or to be committing an offence;
- (c) whom he has reasonable grounds to suspect to have committed an offence which he has reasonable grounds to suspect has been committed; or
- (d) whom he has reasonable grounds to suspect to have committed an offence which he knows has been committed.

(2) The power of arrest conferred by subsection (1) is exercisable only if the police officer has reasonable grounds to believe that it is necessary to arrest the person so as to –

- (a) enable the person's name or address to be ascertained, where the officer does not know, and cannot readily ascertain, the person's name or address or has reasonable grounds to doubt whether a name or address given by the person is his real name or address;
- (b) prevent the person from –
 - (i) causing physical injury to himself or to any other person;
 - (ii) suffering physical injury;
 - (iii) causing loss or damage to property;
 - (iv) committing an indecent act in public; or

- (v) causing an unlawful obstruction on a road;
- (c) protect a child or other vulnerable person from the person;
- (d) allow the prompt and effective investigation of an offence or of the conduct of the person; or
- (e) prevent any prosecution for an offence from being hindered by the disappearance of the person.

(3) A police officer shall not arrest a person on the basis of an allegation made by a third party unless he has carried out a preliminary investigation to verify the allegation.

17. Arrest without warrant by private person

(1) Subject to subsection (2), a private person may, without a warrant, arrest –

- (a) anyone who is in the act of committing an arrestable offence;
- (b) anyone whom he has reasonable grounds to suspect to be committing an arrestable offence;
- (c) where he knows that an arrestable offence has been committed, anyone who has committed the offence or whom he has reasonable grounds to suspect to have committed it.

(2) The power of arrest conferred by subsection (1) is exercisable only if –

- (a) the person making the arrest has reasonable grounds to believe that it is necessary to arrest the person in order to prevent the person from –
 - (i) causing physical injury to himself or any other person;
 - (ii) suffering physical injury;
 - (iii) causing loss or damage to property; or
 - (iv) escaping before a police officer can intervene; and
- (b) it appears to the person making the arrest that it is not reasonably practicable for a police officer to make the arrest instead.

18. Fingerprinting of offender

- (1) Where a person –
- (a) has been convicted of an arrestable offence;
 - (b) has not at any time been in police detention for the offence; and
 - (c) has not had his fingerprints taken in the course of the investigation of the offence or since the conviction,

a police officer may not later than one month after the date of the conviction, require him, by written notice, to attend a police station, within 7 days of the date of the receipt of the notice, so that his fingerprints may be taken.

(2) Where a person convicted of an arrestable offence has had his fingerprints taken as mentioned in subsection (1)(c), and –

- (a) those fingerprints do not constitute a complete set of his fingerprints; or
- (b) some or all of those fingerprints are not of sufficient quality to allow satisfactory analysis, comparison or matching,

a police officer may require him, by written notice, to attend a police station, within 7 days of the date of the receipt of the notice, so that his fingerprints may be taken anew.

(3) A police officer may, without warrant, arrest a person who fails to comply with a notice issued under subsection (1) or (2).

19. Information to be given on arrest

(1) Subject to subsection (2), where a person is arrested without a warrant otherwise than by being informed that he is under arrest and of the ground for the arrest, the arrest shall not be lawful unless the person is, as soon as is practicable after his arrest, informed that he is under arrest and of the ground for the arrest.

(2) Subsection (1) shall not apply where it is not reasonably practicable for the person to be informed, as required, by reason of his having escaped from arrest before the information could be given.

20. Voluntary attendance

Where, for the purpose of assisting the police with an investigation, a person voluntarily attends a police station or some other place where a police officer is

present, or accompanies a police officer to a police station or any such other place without having been arrested, he shall –

- (a) be entitled to leave at will unless he is placed under arrest; or
- (b) be informed at once that he is under arrest if a decision is taken by a police officer to prevent him from leaving at will.

21. Arrest elsewhere than at police station

Where a person is, at any place other than a police station –

- (a) arrested by a police officer for an offence; or
- (b) taken into custody by a police officer after being arrested for an offence by a private person,

the police officer shall, as soon as practicably possible after the arrest, take the person to a police station.

22. Arrest for further offence

Where –

- (a) a person –
 - (i) has been arrested for an offence; and
 - (ii) is at a police station in consequence of that arrest; and
- (b) it appears to a police officer that, if he were released from that arrest, he would be liable to arrest for some other offence,

he shall be arrested for that other offence.

23. Search upon arrest

(1) A police officer may search any person who has been arrested at a place other than a police station where he has reasonable grounds to believe that the person may present a danger to himself or to other persons.

(2) Subject to subsection (3), a police officer shall also have power in any case referred to in subsection (1) –

- (a) to search the arrested person for anything –

- (i) which he might use to assist him to escape; or
 - (ii) which might be evidence relating to an offence; and
 - (b) where the arrest was made for an arrestable offence, to enter and search any premises in which the arrested person was, when arrested or immediately before, for evidence relating to the offence.
- (3) A police officer may only –
- (a) exercise the power conferred by subsection (2)(a) where he has reasonable grounds to believe that the person to be searched may have concealed on him anything for which a search is permitted;
 - (b) exercise the power conferred by subsection (2)(b) where he has reasonable grounds to believe that there is, on the premises, evidence for which a search is permitted.
- (4) A police officer may seize and retain anything which he finds –
- (a) following a search pursuant to subsection (1), where he has reasonable grounds to believe that the person searched might use it to cause physical injury to himself or to another person; or
 - (b) following a search pursuant to subsection (2)(a), where he has reasonable grounds to believe that –
 - (i) the person searched might use it to assist him to escape; or
 - (ii) it is evidence of an offence or has been obtained in consequence of the commission of an offence.

Sub-Part IV – Detention

24. Custody officers

- (1) The Commissioner of Police shall, at every police station, post a police officer not below the rank of Sergeant to be custody officer.
- (2) It shall be the duty of the custody officer at a police station to ensure that –
- (a) all persons in police detention at the station are treated in accordance with this Act; and

- (b) all matters, relating to such persons which are required by this Act to be recorded, are recorded in custody records.

(3) Subject to subsection (4), where a police officer of rank higher than that of a custody officer gives directions, relating to a person in police detention, which are at variance with a decision made, or action taken by the custody officer, the latter shall refer the matter to an officer of the rank of Superintendent or above for a ruling.

(4) Where a function of a custody officer is to be performed, in relation to a person in police detention, and the custody officer was, at any time, involved in the investigation of an offence for which that person is in detention, the custody officer shall seek directions from an officer of rank higher than that of Sergeant as to the performance of that function.

25. Limitations on police detention

(1) Except where it comes to the knowledge of a custody officer that a person in police detention was unlawfully at large at the time of his arrest, where the custody officer –

- (a) becomes aware, in relation to that person, that the grounds for his detention have ceased to apply; and
- (b) is not aware of any other ground on which the continued detention of that person could be justified,

he shall arrange for his immediate release.

(2) A person whose release is arranged for under subsection (1) shall be released without bail unless it appears to the custody officer that –

- (a) there is a need for further investigation of any matter in connection with which he was detained; or
- (b) in respect of any such matter, criminal proceedings may be taken against him,

whereupon the person shall be released on bail.

26. Duties of custody officer before charge

(1) Where a person who has been arrested is brought to a police station, the custody officer shall determine whether there is sufficient evidence to charge

that person with the offence for which he was arrested and may detain him for such period as is necessary to enable him to do so.

(2) Where a custody officer determines that such a person shall be kept in police detention, he shall, as soon as is practicable, make a written record of the grounds for detention, and the record shall, unless the person is not in a fit state to understand or is violent or in need of medical attention, be made in presence of the person.

(3) Where a custody officer determines that there is sufficient evidence to charge the person with the offence for which he was arrested, he shall, unless the person is not in a fit state to be dealt with in accordance with this subsection –

- (a) arrange for the release of the person without charge, on bail or on parole, after consultation with an officer of the rank of Superintendent or above; or
- (b) charge the person.

(4) (a) Nothing in this section shall prevent a police officer not below the rank Inspector from filing before a Court a provisional information averring that a person who has not been charged has committed an offence.

(b) A provisional information filed pursuant to paragraph (a) shall lapse after 3 months or when the person is charged, whichever occurs earlier.

27. Duties of custody officer after charge

(1) Where a person arrested for an offence is charged with the offence, the custody officer shall arrange for his release, on bail or on parole, unless –

- (a) his name or address cannot be ascertained;
- (b) the custody officer has reason to believe that he will fail to appear in Court;
- (c) in the case of an arrestable offence, the custody officer has reasonable grounds to believe that the person may –
 - (i) commit a further offence; or
 - (ii) interfere with witnesses;
- (d) where, under this Act, a sample may be taken from him, his detention is necessary for that purpose; or

- (e) the custody officer has reasonable grounds to believe that his detention is necessary for his own protection.

(2) Where a custody officer does not release a person under subsection (1), he shall, as soon as is practicable, make a written record of the grounds for continued detention, and the record shall, unless the person is –

- (a) not in a fit state to understand;
- (b) violent; or
- (c) in need of medical attention,

be made in presence of the person.

(3) Where a person is –

- (a) charged with an offence; and
- (b) kept in police detention,

he shall be brought before a Magistrate on the next earliest sitting day.

28. Review of police detention

(1) A review of the detention of a person at a police station shall be periodically conducted, with a view to determining whether or not to authorise his continued detention, in the case of a person who –

- (a) has not been charged, by an officer of at least the rank of Inspector not directly involved in the investigation of the offence for which the person was arrested; and
- (b) has been charged, by the custody officer.

(2) (a) The first review shall be not later than 6 hours after the detention started.

(b) The second review shall be not later than 9 hours after the first review.

(c) Subsequent reviews shall be at intervals of not more than 9 hours.

(3) (a) A review under subsection (2) may be postponed, but for not more than 3 hours, where –

- (i) the person under detention is being questioned by a police officer; or
- (ii) for any other good cause, it is not practicable to carry it out.

(b) Where a review is postponed, the fact shall be recorded in writing, by the custody officer, together with the reasons for the postponement.

(4) The officer who carries out a review under this section shall give, to the person under detention, his counsel or attorney, an opportunity to make representations to him about the detention.

29. Period of detention without charge

(1) Subject to this section, a person shall not be kept in police detention for more than 24 hours without being charged.

(2) Where a person is removed to hospital because he is in need of medical attention, any time during which he is being questioned by a police officer in hospital or on the way there or back shall be included in the period to be calculated for the purpose of subsection (1).

Sub-Part V – Questioning and Treatment of Detainees

30. Search of detainee

(1) The custody officer at a police station shall ascertain and record anything which a person has with him where he is –

- (a) brought to the station after being arrested or committed to custody by order of a Court; or
- (b) arrested at the station and detained.

(2) A custody officer may seize and retain anything referred to in subsection (1), other than clothes and personal effects, unless he has reasonable grounds to believe that any of the clothes or personal effects may be used to –

- (a) cause damage or injury;
- (b) interfere with evidence; or

(c) assist the detainee to escape.

(3) Where the custody officer considers it necessary to do so to enable him to carry out his duty under subsection (1) or (2), he may, subject to subsection (7), search the person or cause him to be searched by another police officer.

(4) Where an officer of at least the rank of Inspector authorises it, a person who is detained at a police station may, subject to subsection (7), be searched or examined or both searched and examined for the purpose of –

(a) ascertaining whether he has any mark that would tend to identify him as a person involved in the commission of an offence; or

(b) facilitating the ascertainment of his identity.

(5) The officer in charge at a reform institution may, in relation to a person detained at the institution, exercise any of the powers given to a police officer under this section.

(6) An identifying mark found on a search or examination under subsection (4) may be photographed.

(7) (a) An intimate search may not be conducted under this section.

(b) The police or other officer carrying out a search or examination under this section shall be of the same sex as the person searched.

31. Intimate search and sample

(1) Where a police officer of at least the rank of Inspector has reasonable grounds to believe that a person who is detained at a police station may have concealed on him a dangerous drug or anything which he could use for purposes of telecommunication or to cause injury to himself or to others, he may authorise an intimate search of that person.

(2) An intimate search shall only be carried out –

(a) at a police station or at a hospital;

(b) under the supervision of a medical practitioner; and

(c) by a person of the same sex as the person searched.

(3) A custody officer may seize and retain anything which is found on an intimate search of a person where he has reasonable grounds to believe that it may be evidence relating to, or likely to be used for the commission of, an offence.

(4) The officer in charge at a reform institution may, in relation to a person detained at the institution, exercise any of the powers given to a police officer under subsection (1) or (3).

(5) Where a police officer of at least the rank of Inspector has reasonable grounds to believe that –

- (a) a person who is detained at a police station is involved in an arrestable offence; and
- (b) an intimate sample may tend to confirm or disprove his involvement,

he may authorise an intimate sample to be taken from that person.

(6) An intimate sample shall only be taken –

- (a) at a police station or a hospital;
- (b) except in the case of a sample of urine, by or under the supervision of –
 - (i) a dentist, in the case of a dental impression; or
 - (ii) a medical practitioner.

32. Non-intimate sample

Where a police officer of at least the rank of Inspector has reasonable grounds to believe that –

- (a) a person detained at a police station is involved in an arrestable offence; and
- (b) a non-intimate sample may tend to confirm or disprove his involvement,

he may authorise a non-intimate sample to be taken from that person where –

- (i) the person has not had a non-intimate sample of the same type and from the same part of the body taken in the course of the investigation; or
- (ii) he has had such a sample taken but it proved insufficient.

33. X-ray and ultrasound scan

(1) (a) Where a police officer of least the rank of Inspector has reasonable grounds to believe that a person detained at a police station may have swallowed a dangerous drug or anything which he could use for purposes of telecommunication or to cause injury to himself or to others, he may authorise an x-ray of the person to be taken or an ultrasound scan of the person to be carried out, or both.

(b) The officer in charge of a reform institution may, in relation to a person detained at the institution, exercise the powers given to a police officer under paragraph (a).

(2) An x-ray or an ultrasound scan may only be taken or carried out –

(a) at a hospital; and

(b) by or under the supervision of a medical practitioner.

34. Information regarding arrest

Where a person has been arrested and is detained at a police station, he shall, subject to this section, be entitled, if he so requests, to have a friend or a relative or other person who is known to him or is likely to take an interest in his welfare, informed by the custody officer, as soon as practicable, that he has been arrested and is being detained.

35. Legal advice

(1) Where a person has been arrested and is detained at a police station, he shall, subject to this subsection, be informed that he is entitled to consult with, and be represented by, a barrister, in person or by telephone, at any reasonable time, and the custody officer shall make the necessary arrangements for that purpose.

(2) Where a person who has been charged with an offence and detained appears before a Magistrate, he shall be informed that he is entitled to consult with, and be represented by, a barrister on that occasion, and the Magistrate shall make the necessary arrangements for that purpose.

(3) The Chief Justice shall, after consultation with the Bar Council, make such arrangements as may be required to ensure that an adequate number of barristers who are willing and able to act as duty barristers for the purposes of subsections (1) and (2) are available in every Police Station and at every District Court.

(4) A barrister who performs duty under this section shall be entitled to such fee as the Chief Justice may determine.

36. Interviews

(1) The Attorney-General shall, not later than 12 months after the coming into operation of this section –

- (a) prescribe a Code of Practice in connection with the tape recording of interviews of persons who are suspected in connection with the commission of an arrestable offence which are conducted by police officers at police stations or elsewhere; and
- (b) prescribe the arrestable offences in relation to which police officers conducting interviews of suspects are required to tape-record the interviews.

(2) The Attorney-General shall, not later than 18 months after the coming into operation of this section –

- (a) prescribe a Code of Practice in connection with the visual and sound recording of interviews of persons who are suspected in connection with the commission of an arrestable offence which are conducted by police officers at police stations or elsewhere; and
- (b) prescribe the arrestable offences in relation to which police officers conducting interviews are required to visually and sound record the interviews.

37. Fingerprinting of detainee

The fingerprints of a person who has been arrested and is detained at a police station may not be taken unless –

- (a) he is detained in consequence of his arrest for an arrestable offence; and
- (b) he has not had his fingerprints taken in the course of the investigation of the offence; or
- (c) he has already had his fingerprints taken but –
 - (i) they do not constitute a complete set of his fingerprints; or

- (ii) some or all of them are not of sufficient quality to allow analysis, comparison or matching; and
- (d) the taking of the fingerprints is authorised by a police officer of at least the rank of Inspector or by a Court.

38. Photographing of detainee

(1) A person who has been arrested and is detained at a police station may be photographed by a police officer –

- (a) with his consent; or
 - (b) where consent is withheld, or it is not practicable to obtain it, with the authorisation of a police officer of at least the rank of Inspector.
- (2) A photograph taken under subsection (1) –
- (a) may be used by, or disclosed to, any person for a purpose related to the prevention or detection of crime, the investigation of an offence, the conduct of a prosecution or the enforcement of a sentence; and
 - (b) after being so used or disclosed, may be retained but may not be so used or disclosed except for a purpose so related to one of the matters specified in paragraph (a).

39. Destruction of sample, fingerprint or photograph

- (1) Where a sample, fingerprint or a photograph –
- (a) is taken from a person in connection with the investigation of an offence; and
 - (b) is not required to be destroyed pursuant to subsection (2),

it may be retained but shall not be used by any person except for a purpose related to the –

- (i) prevention or detection of crime;
- (ii) investigation of an offence;
- (iii) conduct of a prosecution or the enforcement of a sentence.

(2) Subject to subsection (3), where –

- (a) a sample, fingerprint or a photograph has been taken from a person in connection with the investigation of an offence; and
- (b) that person is not charged with having committed the offence,

it shall be destroyed by the custody officer as soon as it has fulfilled the purpose for which it was taken.

(3) A sample, fingerprint or a photograph is not required to be destroyed pursuant to subsection (2) where it was taken for the purpose of the investigation of an offence of which a person has been convicted unless –

- (a) the conviction is spent; or
- (b) on application made to him by an interested party, a Judge so orders.

(4) For the purposes of this section, a conviction is spent where, following the conviction the person –

- (a) was only sentenced to pay a fine not exceeding 1,000 rupees or such other amount as may be prescribed and more than 10 years have elapsed since he paid the fine.
- (b) was made the subject of an order of absolute discharge; or
- (c) was made the subject of a probation order, an order of conditional discharge or a Community Service Order; and
- (d) he has satisfied the requirements of any such order.

(5) In subsection (4) –

“Community Service Order” has the same meaning as in the Community Service Order Act;

“order of absolute discharge” and “order of conditional discharge” have the same meaning as in section 197 of the Criminal Procedure Act;

“probation order” has the same meaning as in the Probation of Offenders Act.

PART III – DISCLOSURE OF CASE

40. Primary disclosure by prosecutor

(1) Every prosecutor shall, subject to subsection (5), at such time as the Court may direct before the start of the trial of a person charged with an offence –

- (a) disclose to that person any prosecution material of whatever kind which has not previously been disclosed to him and which might reasonably be considered by the Court capable of undermining the case for the prosecution or assisting the case for that person; or
- (b) inform him and the Court that there is no material referred to in paragraph (a).

(2) Where prosecution material consists of information which has been recorded in any form, the prosecutor shall disclose it –

- (a) by ensuring that a copy of it is given to the person charged; or
- (b) where in the prosecutor's opinion it is not practicable or desirable to do so, by allowing him to inspect it at a reasonable time and place.

(3) Where prosecution material consists of information which has not been recorded, the prosecutor shall cause it to be recorded in such form as the Court may require and disclose it –

- (a) by ensuring that a copy of it is given to the person charged; or
- (b) where, in the prosecutor's opinion, it is not practicable or desirable to do so, by allowing him to inspect it at a reasonable time and place.

(4) Where prosecution material does not consist of information, the prosecutor shall disclose it by allowing the person charged to inspect it at a reasonable time and place.

(5) No prosecution material shall be disclosed, under this section, to the extent that the Court, on an application by the prosecutor, considers that it is not in the public interest to disclose it and orders accordingly.

41. Disclosure by person charged

(1) A person charged shall, when legally represented, within a reasonable time to be determined by the Court after the prosecution has discharged its obligation under section 40 (1), give a defence statement to the Court and the prosecutor and, where the Court so orders, to any other accused in the proceedings.

(2) A defence statement shall, in such form and manner as the Court may direct, indicate –

- (a) the nature of the defence of the person charged, including any particular defences on which he intends to rely;
- (b) the matters of fact on which he takes issue with the prosecution and his reasons for so doing; and
- (c) any point of law which he wishes to raise, and any authority on which he intends to rely for that purpose.

(3) A defence statement that discloses an alibi shall contain particulars of it, including –

- (a) the name and address of any witness the person charged believes is able to give evidence in support of the alibi; and
- (b) any information in his possession which might be of material assistance in identifying or finding any such witness in whose case any of the matters mentioned in paragraph (a) is not known to the accused when the statement is given.

(4) Where the person charged is not legally represented, the Court shall, before the start of the trial –

- (a) ascertain that the prosecution has fulfilled its obligation under section 40(1); and
- (b) require the person charged to make an oral statement from the dock as to his defence and record it.

(5) The Judge, in a trial before a Judge and jury, may, where he is of opinion that seeing a copy of any written defence statement would help the jury to understand the case or resolve an issue –

- (a) direct that the jury be given a copy of the defence statement; and

- (b) where he does so, direct that it be edited so as not to include references to matters evidence of which would be inadmissible.

42. Defence witness notice

(1) A person charged shall give to the Court and the prosecutor and, where the Court so orders, to any other accused in the proceedings, a notice at such time and in such form and manner as the Court may direct, indicating whether he intends to call any person, other than himself, as witness at his trial and, if so –

- (a) giving the name and address of each such proposed witness; or
- (b) providing any information, in his possession, which might be of material assistance in identifying or finding any such proposed witness in whose case any of the matters mentioned in paragraph (a) are not known when the notice is given.

(2) Where, following the giving of a notice under subsection (1), the person charged –

- (a) decides to call a person, other than himself –
 - (i) who is not included in the notice as a proposed witness; or
 - (ii) decides not to call a person who is so included; or
- (b) discovers any information which, under subsection (1), he would have had to include in the notice if he had been aware of it when giving the notice,

he shall, at such time as the Court shall direct, give an appropriately amended notice to the Court and the prosecutor and, where the Court so orders to any other accused in the proceedings.

43. Further disclosure by prosecutor

(1) Where, a person charged has given a defence statement, the prosecutor shall, subject to subsection (4) –

- (a) disclose, to the person charged, any prosecution material which –
 - (i) has not previously been disclosed; and

(ii) might reasonably be considered by the Court capable of assisting the defence as disclosed by the defence statement; or

(b) provide him with a written statement that there is no material referred to in paragraph (a).

(2) (a) The prosecutor shall keep under review the question whether at any given time and, in particular, following the giving of a defence statement, there is prosecution material which –

(i) might reasonably be considered capable by the Court of undermining the case for the prosecution or assisting the case for the defence; and

(ii) has not been disclosed to the person charged.

(b) Where at any time there is any such material available, the prosecutor shall, subject to subsection (4), disclose it to the person charged as soon as is reasonably practicable.

(3) Where a person has given a defence statement and he has, at any time, reasonable cause to believe that there is prosecution material which is required by this section to be disclosed to him and has not been, he may apply to the Court for an order requiring the prosecutor to disclose it to him and the Court may, subject to subsection (4), make an order requiring the prosecutor to disclose the material.

(4) No prosecution material shall be disclosed under this section to the extent that the Court, on an application by the prosecutor, considers it is not in the public interest to disclose it and orders accordingly.

44. Delay in disclosure by prosecutor

A Court may, on its own motion, or on motion of a person charged, consider whether delay on the part of the prosecutor in disclosing prosecution material does not constitute a ground for staying the proceedings for abuse of process, in particular if it involves such delay by the prosecutor that the person charged is denied a fair trial.

45. Fault in disclosure by person charged

(1) This section applies where a person charged who is legally represented –

(a) fails to give a defence statement within a reasonable time determined by the Court;

- (b) sets out inconsistent defences in his defence statement; or
- (c) at his trial –
 - (i) puts forward a defence which –
 - (A) was not mentioned in his defence statement; or
 - (B) is different from any defence set out in that statement;
 - (ii) relies on a matter which, in breach of the requirements imposed by or under section 41, was not mentioned in his defence statement;
 - (iii) adduces evidence in support of an alibi without having given particulars of the alibi in his defence statement;
 - (iv) calls a witness to give evidence in support of an alibi without having complied with section 41(2) as regards the witness in his defence statement; or
 - (v) calls a witness, other than himself, not included, or not adequately identified, in a witness notice under section 42.

(2) Subject to subsections (3) to (7), where this section applies –

- (a) the Court, the prosecutor or any other party charged may make such comment as appears appropriate; and
- (b) the Court or the jury may draw such inferences as appear proper in deciding whether the person charged is guilty of the offence concerned.

(3) Where this section applies, by virtue of subsection (1)(c)(ii), and the matter which was not mentioned is a point of law or an authority, comment by the prosecutor or another party under subsection (2)(a) may be made only with the leave of the Court.

(4) Where this section applies by virtue of subsection (1)(c)(v), a comment by the prosecutor or another party under subsection (2)(a) may be made only with the leave of the Court.

(5) Where a person charged puts forward a defence which is different from any defence set out in his defence statement, in doing anything under subsection (2) or in deciding whether to do anything under it, the Court shall have regard to –

- (a) the extent of the differences in the defences; and
- (b) whether there is any justification for it.

(6) Where a person charged calls a witness whom he has failed to include, or to identify adequately, in a witness notice under section 42, in doing anything under subsection (2) or in deciding whether to do anything under it, the Court shall have regard to whether there is any justification for the failure.

(7) A person shall not be convicted of an offence solely on an inference drawn under subsection (2)(b).

46. Public interest in non-disclosure

(1) At any time –

- (a) after a Court makes an order under section 40(5) or 43(4); and
- (b) before the person charged is acquitted or convicted; or
- (c) before the prosecutor decides not to proceed with the case concerned,

the person charged may apply to the Court for a review of the question whether it is still not in the public interest to disclose prosecution material affected by its order.

(2) The Court, on the hearing of an application under section 40(5) or 43(4) or under subsection (1), shall afford an opportunity to be heard to any party –

- (a) claiming to have an interest in the prosecution material who applies to be heard by the Court; and
- (b) who shows he was involved in the prosecutor's attention being brought to the material.

(3) The Court shall, following an application under subsection (1), review the question and, if it concludes that it is in the public interest to disclose prosecution material to any extent, it shall so order.

(4) Where the prosecutor is informed of an order made under subsection (3), he shall act accordingly, having regard to the provisions of this Part, unless he decides not to proceed with the case against the person charged.

47. Confidentiality of information

(1) Where a person charged is provided with, or allowed to inspect, a document or other object under this Part, he shall not, subject to subsections (2) and (3), use or disclose it or any information recorded in it.

(2) A person charged may use or disclose the object or information –

- (a) in connection with the proceedings for the purposes of which he was provided with the object or allowed to inspect it;
- (b) with a view to the taking of further criminal proceedings with regard to the matter giving rise to the proceedings mentioned in paragraph (a); or
- (c) in connection with the proceedings first mentioned in paragraph (b).

(3) Where –

- (a) a person charged applies to the Court for an order granting permission to use or disclose an object or information referred to in subsection (1); and
- (b) the Court, after hearing the prosecutor or any other person having an interest in the object or information, makes such an order,

the person charged may use or disclose the object or information for the purpose and to the extent specified by the Court.

PART IV – EVIDENCE

48. Exclusion of unfair evidence

In any criminal proceedings, the Court may refuse to allow –

- (a) evidence on which the prosecution proposes to rely to be given; or
- (b) a statement referred to in section 53 to be admitted,

where it appears to the Court that, having regard to all the circumstances, including the circumstances in which the evidence was obtained, the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the Court ought not to admit it.

49. Competency and compellability of person charged and spouse

(1) (a) A person charged with an offence shall, if he so elects, be a competent witness for the defence but the failure of such a person to give evidence shall not, directly or indirectly, be the subject of any unfair comment by the prosecution.

(b) Nothing in paragraph (a) shall, in a case where the evidence for the prosecution establishes a strong and unshaken *prima facie* case and the person charged adduces no evidence, prevent the Court from concluding that the prosecution evidence stands unrebutted.

(c) A person charged who gives evidence pursuant to paragraph (a) may be asked a question in cross-examination which would tend to incriminate him as to the offence charged.

(d) Notwithstanding section 165 of the Courts Act, a person charged who gives evidence pursuant to paragraph (a) may be asked a question, in cross-examination, which would tend to show that he has committed, or been convicted of, or been charged with, an offence other than that with which he is charged, where –

- (i) the proof that he has committed or been convicted of or been charged with, that offence is admissible and relevant to show that he has committed the offence with which he is charged;
- (ii) he has given evidence of his good character or otherwise tried to establish his good character, or the conduct of his defence has been such as to cast imputations on the character of a witness for the prosecution; or
- (iii) he has given evidence against another person charged with the same offence on another information.

(2) (a) The spouse of a person charged with an offence shall be compellable to give evidence on behalf of that person.

(b) The spouse of a person charged with an offence shall be compellable –

- (i) to give evidence for the prosecution only in respect of an offence specified in paragraph (c) with which that person is charged in the proceedings; or

- (ii) to give evidence on behalf of any other person charged in the proceedings only in respect of an offence specified in paragraph (c) with which that other person is charged.

(c) An offence shall be a specified offence for the purpose of paragraph (b) where it –

- (i) involves an assault on, or injury or a threat of injury to, the spouse of a person charged or a person who, at the material time, was under the age of 18;
- (ii) is a sexual offence alleged to have been committed in respect of a person who at the material time was under that age; or
- (iii) consists of attempting or conspiring to commit, or of aiding, abetting, counselling, procuring or inciting the commission of an offence referred to in subparagraph (i) or (ii).

(d) The failure of the spouse of a person charged to give evidence in any proceedings shall not, directly or indirectly, be the subject of any unfair comment by the prosecution.

(3) In this section –

- (a) a person charged with an offence does not include a person who is not, or is no longer, liable to be convicted for an offence in the proceedings as a result of pleading guilty or otherwise; and
- (b) where the age of person is at any time relevant for the purpose of subsection (2)(c), his age at the material time shall be deemed to be, or to have been, that which it appears to the Court to be, or to have been, at the time.

50. Time for taking accused's evidence

Where at the trial of any person for an offence –

- (a) the defence intends to call 2 or more witnesses as to the facts of the case; and
- (b) those witnesses include the accused,

the accused shall be called before the other witnesses unless the Court, in its discretion and on good cause, otherwise directs.

51. Right of reply

Where the prosecutor's right of reply depends on the question whether evidence has been called for the defence, the fact that the person charged has been called as a witness shall not of itself confer such a right on the prosecution.

52. Admissibility of sound or visual recording

The sound or visual recording of any written statement made or any act done by a person charged shall be admissible in evidence in any criminal proceedings where the recording was made –

- (a) by a police officer or other investigating officer in the course of an investigation conducted in accordance with this Act; or
- (b) by such other person and in such manner as may be prescribed and its authenticity is verified to the Court's satisfaction.

53. Admissibility of certain depositions and statements

(1) Where a person is charged with an offence before a Court, following his committal to stand trial at the close of a preliminary enquiry, the deposition of a person who gave evidence at the enquiry shall be admissible at the trial as evidence of any fact mentioned in it where the person –

- (a) cannot be summoned or, having been summoned, cannot attend the trial, by reason of death, absence from Mauritius, a physical or mental condition or other good cause; or
- (b) attends the trial but refuses to give evidence, denies making the statement or gives evidence which is materially inconsistent with it.

(2) Where a person is charged with an offence before a Court, otherwise than in accordance with subsection (1), a statement relevant to the proceedings made in writing by a person may, with leave of the Court, and subject to subsections (3) and (4), be admitted as evidence of any fact mentioned in it where the person –

- (a) has been summoned as a witness and is available for cross-examination but –
 - (i) refuses to give evidence;
 - (ii) denies making the statement; or

- (iii) gives evidence which is materially inconsistent with it; or
- (b) cannot be summoned to attend or, having been summoned, cannot attend the trial because he –
 - (i) is dead;
 - (ii) is unfit to attend by reason of a bodily or mental condition;
 - (iii) is absent from Mauritius and it is not reasonably practical to secure his attendance;
 - (iv) cannot be found after all reasonable steps have been taken to find him; or
 - (v) is kept away from the proceedings by threats of violence and intimidation.
- (3) A statement referred to in subsection (2) may be so admitted where –
 - (a) the witness confirms, or it is proved, that he made it;
 - (b) the Court is satisfied that –
 - (i) direct oral evidence of the fact concerned would be admissible in the proceedings;
 - (ii) it was made voluntarily; and
 - (iii) it is reliable; and
 - (c) the Court is satisfied that, when the statement was made, the witness understood the requirement to tell the truth.
- (4) In deciding whether the statement is reliable, the Court shall have regard to –
 - (a) whether, by reason of the circumstances in which it was made, there is sufficient evidence of its reliability; and
 - (b) any explanation of the witness for refusing to give evidence, denying having made the statement or giving evidence which is inconsistent with the statement.

(5) In estimating the weight, if any, to be attached to the statement, regard shall be had to all the circumstances from which any inference can reasonably be drawn as to its accuracy, or otherwise, including –

- (a) the fact that he cannot be cross-examined; and
- (b) a reasonable suspicion that the witness had been influenced or intimidated.

54. Confessions

(1) Subject to section 52, a confession made by a person charged with an offence may be given in evidence against him or for a co-accused in so far as it is relevant to any matter in issue in the proceedings and is not excluded by the Court pursuant to section 48, 58 or this section.

(2) Where the prosecution or a co-accused proposes to give in evidence a confession made by a person charged with an offence and it is represented to the Court that the confession was, or may have been, obtained –

- (a) by oppression of the person who made it; or
- (b) in consequence of anything said or done which was likely, in the circumstances existing at the time, to render unreliable any confession which might be made by him as a result,

the Court shall not allow the confession to be given in evidence against the person charged or for the co-accused except in so far as the prosecution proves to the Court beyond reasonable doubt or, as the case may be, the co-accused proves to the Court on a balance of probabilities that the confession was not obtained in the manner set out in paragraph (a) or (b).

(3) The Court may, of its own motion, require the prosecution or the co-accused, as a condition of allowing it or him to give the confession in evidence, to prove that the confession was not obtained in the manner referred to in paragraph (a) or (b) of subsection (2).

(4) The fact that a confession is wholly or partly excluded pursuant to section 48 or this section shall not affect the admissibility in evidence –

- (a) of any fact discovered as a result of the confession; or
- (b) where the confession is relevant as showing that the person charged speaks, writes or expresses himself in a particular way, of so much of the confession as is necessary to show that he does so.

(5) (a) Evidence that a fact to which paragraph (b) applies was discovered as a result of a statement made by a person charged shall not be admissible unless evidence of how it was discovered is given on his behalf.

(b) This paragraph applies to any fact discovered –

(i) as a result of a confession which is wholly excluded pursuant to section 48 or this section; and

(ii) as a result of a confession which is partly so excluded, if the fact is discovered as a result of the excluded part of the confession.

(6) In this section–

“oppression” includes –

(a) torture, inhuman or degrading treatment; and

(b) the use or threat of violence.

55. Confession by minor or mentally handicapped person

Where at a trial –

(a) the case against a person charged with an offence depends wholly or substantially on a confession made by him; and

(b) the Court is satisfied that –

(i) the person is a minor or a mentally handicapped person; and

(ii) the confession was not made in the presence of a parent or guardian or some independent person who is not a police officer,

the Court or Judge shall –

(A) where the case is tried with a jury, warn the jury that there is a special need for caution before convicting the accused in reliance on the confession; or

(B) where the case is not tried with a jury, treat the case as one where there is a special need for caution before convicting the accused in reliance on the confession.

56. Translation not necessary in certain cases

Where, in any criminal proceedings, a witness speaks in a language which is understood by the person charged, the Judge or Magistrate, the jurors, if any, and counsel, the examination of the witness may take place in that language.

57. Evidence of formal nature

(1) Subject to subsection (2), in any criminal proceedings, an affidavit sworn by a witness, whose evidence is of a formal nature, shall be sufficient evidence of the facts stated in it.

(2) The Court may, where it thinks fit, on application made by a party to the proceedings or of its own motion, summon and examine the person concerned as to the contents of his affidavit.

58. Exclusion of evidence

(1) A breach of this Act or of the Codes of Practice made under this Act shall not lead to the exclusion of evidence obtained as a result of such breach unless it is established that –

- (a) the effect of the breach on the trial cannot be cured;
- (b) the breach significantly and substantially affects that accused's right to a fair trial; and
- (c) the evidence which was obtained as a result of the breach was not independently available.

(2) This section shall be in addition to, and not in derogation from, section 48.

PART V – MISCELLANEOUS

59. Offences

Any person who resists, opposes, molests, hinders or obstructs an enforcement or investigating officer other than a public officer who is exercising a power conferred on him by this Act, shall commit an offence and shall, on conviction, be liable to a fine not exceeding 10,000 rupees or to imprisonment.

60. Regulations

(1) The Attorney-General may, for the purpose of this Act, make such regulations as he thinks fit.

- (2) Regulations made under subsection (1) may provide for –
- (a) anything that may be prescribed under this Act; and
 - (b) issuing Codes of Practice in connection with the –
 - (i) exercise by police officers of statutory powers –
 - (A) to search a person without first arresting him;
 - (B) to search a vehicle without making an arrest; or
 - (C) to arrest a person;
 - (ii) detention, treatment, questioning and identification of persons by police officers, particularly persons particulars of whom are given pursuant to section 41(3) or 42(1);
 - (iii) searches of premises by police officers;
 - (iv) seizure of property found by police officers on persons or premises; or
 - (v) exercise by investigating or enforcement officers of any power referred to in this paragraph.

61. Repeals

The provisions of the enactments set out in the first column of the Second Schedule which are specified in the second column of that Schedule are repealed.

62. Consequential amendments

The enactments set out in the first column of the Third Schedule are amended in the manner specified in the second column of that Schedule.

63. Commencement

(1) Subject to subsection (2), this Act shall come into operation on a day to be fixed by Proclamation.

(2) Different dates may be fixed for the coming into operation of different sections of the Act.

FIRST SCHEDULE

[Section 3(1)]

RETAINED PROVISIONS

Short title	Retained provision
Animal Diseases Act	section 16
Biological and Toxin Weapons Convention Act	section 6
Chemical Fertilisers Control Act	section 8
Chemical Weapons Convention Act	sections 9 and 10
Consumer Protection Act	section 7
Consumer Protection (Price and Supplies Control) Act	sections 23, 25 and 26
Courts Act	sections 128 (4), 161, 161A, 161B, 161C, 162, 163, 165, 168, 170, 171, 172, 173, 174, 175, 177, 177A, 181, 181A, 181B, 181C, 181D, 181E, 181F, 182
Criminal Code (Supplementary) Act	sections 69, 91 and 102A
Criminal Procedure Act	sections 54 to 58
Customs Act	sections 113, 128, 131A, 132, 133, 134, 135, 136, 137, 142 and 151 to 153
Dangerous Chemicals Control Act	section 31
Dangerous Drugs Act	sections 27 (6), 31, 49, 51, 53 and 57
Data Protection Act	section 17
Deportation Act	section 7 (2)
District and Intermediate Courts (Criminal Jurisdiction) Act	sections 4 to 15, 23 and 51

Electronic Transactions Act	sections 45 and 46
Environment Protection Act	sections 35, 79 and 80
Excise Act	sections 29, 30 and 32 to 34
Explosives Act	sections 21, 21A and 21B
Fair Trading Act	section 12
Films Act	section 18
Firearms Act	section 41
Fisheries and Marine Resources Act	sections 51(2), 53 to 55
Forests and Reserves Act	section 12
Immigration Act	section 13
Income Tax Act	section 126
Juvenile Offenders Act	sections 9 and 19
Legal Metrology Act	sections 15 and 16
Local Government Act	sections 64 and 89
Local Government Act 2003	section 43
Mauritius Agricultural Marketing Act	section 26
Mauritius Sugar Terminal Corporation Act	section 29
Merchant Shipping Act	section 189
National Coast Guard Act	section 12
Police Act	sections 9(1)(c), 13A to 13F, 14 and 16
Ports Act	section 67
Prevention of Corruption Act	section 53

Prevention of Terrorism Act	section 27
Quarantine Act	section 10
Reform Institutions Act	sections 7, 10 and 12
Removal of Sand Act	section 15
Road Traffic Act	sections 123G, 123H, 123L, 134, 142, 143, 162, 173, 173A and 182
Tinted Motor Spirit Act	sections 3, 4 and 5
Tourism Authority Act	sections 36, 66, 67, 70, 96, 97, 112 and 115
Town and Country Planning Act	section 27
Transfer of Prisoners Act	section 8
Value Added Tax Act	section 35
Wildlife and National Parks Act	section 28

SECOND SCHEDULE

[Section 61]

REPEALED PROVISIONS

Short title	Repealed provision
Courts Act	sections 56, 128(2), 164, 168(2), 169 and 187 and the Third Schedule
Criminal Code (Supplementary) Act	sections 30, 31 and 89
Criminal Procedure Act	sections 15, 60, 61, 221 and 222
Curepipe Carnegie Library Act	section 7
District and Intermediate Courts (Criminal Jurisdiction) Act	sections 16, 17, 18, 20 to 22, 24 to 39 and 47
Police Act	sections 12 and 13
Tourism Authority Act	section 118

THIRD SCHEDULE

[section 62]

CONSEQUENTIAL AMENDMENTS

Short title	Extent of amendment
Courts Act	<p>(a) in section 128(1), by deleting the words “or criminal”;</p> <p>(b) in section 161 –</p> <p>(i) by deleting the word “Part” and replacing it by the word “Sub-Part”;</p> <p>(ii) by deleting the definition of “sexual offence case”;</p> <p>(c) in section 163, by deleting the words “as hereinafter provided” and replacing them by the words “as provided in this Sub-Part or in the Police and Criminal Evidence Act 2012”;</p> <p>(d) in section 165(1), by deleting the words “in this Sub-Part”;</p> <p>(e) in section 168 (1), by inserting, after the words “to a trial”, the words “in a civil case”;</p> <p>(f) in section 172, by inserting, after the words “any question,” the words “in a civil case”;</p> <p>(g) in section 173(1), by inserting, after the words “at any trial”, the words “in a civil case”;</p> <p>(h) in section 173 (2), by deleting the word “judicial” and replacing it by the word “civil”;</p> <p>(i) in section 175 –</p> <p>(i) by inserting, after the words “other than English”, the words “or French”</p> <p>(ii) by deleting the figure “189” and replacing it by the words “section 56 of</p>

the Police and Criminal Evidence Act 2012”;

- (j) by repealing section 179 and replacing it by the following section –

179. Failure to give evidence

Notwithstanding any other enactment, any person who, having been summoned to attend as a witness before a Court to give evidence or to produce a document or exhibit –

- (a) fails to attend as required by the summons;
- (b) fails or refuses to produce a document or exhibit which he is required to produce; or
- (c) refuses to give evidence or to answer a question put to him,

shall commit an offence and shall, on conviction, be liable to a fine of not less than 50,000 rupees and not more than 1,000,000 rupees and to imprisonment.

- (k) by repealing Sub-Part II of Part V, the heading of Sub-Part III being renumbered “II”.

Criminal Code

by inserting, after section 280, the following new section –

280A. Interference with witnesses or potential witnesses

- (1) Any person who –
 - (a) advises, persuades or intimidates, or offers an inducement to, a person who has been summoned, or whom he has reason to believe will be summoned, as a witness in criminal proceedings to give

false or misleading evidence or to abstain from giving evidence; or

- (b) advises, persuades or intimidates, or offers inducement to, a person to give false or misleading information, or to abstain from giving information, to a police officer who is engaged in the detection or investigation of an offence,

shall commit an offence.

(2) Any person who commits an offence under subsection (1) shall, on conviction, be liable to a fine not exceeding 100,000 rupees and penal servitude not exceeding 20 years.

Criminal Procedure Act

(a) in section 221, by inserting, after the words "fingerprint slip", the words "or by means of a fingerprint scanner"

(b) in section 223, by deleting the word "President" and replacing it by the word "Attorney-General"

Official Secrets Act

in section 16(1), by adding the words "by a police officer"

Public Officers' Protection Act

in section 3 –

(a) by deleting the words "(1)";

(b) by repealing subsection (2);

(c) by deleting the words ", by force or violence,";

(d) by deleting the words "for a term not exceeding 3 months".

Stage Plays Act

in section 7, by deleting the words "or a censor", "or censor" and "censor or" in subsections (1), (2) and (3), respectively.