

The abolition of Preliminary Enquiry



The Star Online

It is now law. Preliminary examinations have been abolished by the Committal Proceedings Act, 2013, which came into operations in January 2016 ('The Act'). One of the effects of the Act is that the prosecution, at the parish court level, does not have to present the

evidence of the prosecution's witnesses and to have them cross-examined by the accused just to determine if there is a *prima facie* case for committal for trial in the Circuit Court. The Act concerns serious indictable offences that are triable in the Circuit Court, such as murder, wounding with intent, and most sexual offences.

Prior to the passing of the Act, when an accused was brought to the parish judge on an indictable offence, which in the opinion of the parish judge should be tried in the Circuit Court, the said judge was ordinarily required to commence a preliminary examination, unless the accused elected to forego those proceedings or the director of public prosecutions issued a voluntary bill of indictment for trial to proceed without a preliminary examination. The preliminary examination would afford the accused an opportunity to test the strength of the prosecution's case through the cross-examination of witnesses whose testimony would usually be given orally. Committal proceedings may now be conducted wholly on the basis of written statements submitted to the judges (by the prosecution as well as the defence). Section 6 of the Act outlines the conditions for the admissibility of those statements. These include a requirement for the statement to contain a declaration by the maker that the said statement is true to the best of his

knowledge and belief and, that if the statement is knowingly false, he would be liable for prosecution.

Section 4 of the Act gives the judge the discretion to take oral evidence at the committal proceedings, except for the evidence of the accused, if it is necessary to assist the judge to make a determination in the matter. Oral evidence given must be under oath and subject to cross-examination.

Where the judge receives oral evidence, the accused has the option to tender into evidence his written statement, if he so elects; make an unsworn statement; give oral evidence; or remain silent. The accused person or his attorney-at-law also has a right to make submissions to the judge.

After examining all the evidence, the judge, if satisfied that there is no *prima facie* case sufficient to ground the charge against the accused, shall discharge the accused. On the other hand, once the Judge is satisfied that there is sufficient *prima facie* evidence to ground the charge, the judge would commit the accused to stand trial in the next sitting of the Circuit Court. The accused may be remanded in custody or be admitted to bail until the matter is mentioned in the Circuit Court. When the accused is committed to stand trial, a judge shall make a witness order requiring each witness to attend the trial at the Circuit Court. If they should fail to attend, then they are liable to be sanctioned for contempt of court.

There is no doubt that the Act will cause a more expeditious movement of cases triable in the Circuit Court through the parish courts. It will save time and may even reduce expenses for accused persons, who sometimes have to fund expensive and lengthy preliminary examinations and then take on even more expensive trial costs in the Circuit Court. However, the challenge might be a flood of cases in the Circuit Courts, which, without additional Supreme Court judges, courtrooms and court staff, could serve to exacerbate the backlog of cases that now exists in the courts. Only time will tell.

Rethink Role Of District Constables

The Gleaner

THE EDITOR, Sir:

The traditional style of policing used in Jamaica and many other countries for many years is not suitable to deliver modern policing and community-safety services.

The demands of our modern age require that the police act in partnership with the public and with other public-, private- and voluntary-sector organisations to deliver collaborative services that address crime, fear of crime and other safety issues which concern communities.

Community policing is central to the concept of community safety. The corporate strategy of the Jamaica Constabulary Force specifically mandates the employment of community policing in its efforts to fight crime in Jamaica. The idea of placing district constables back in their communities was resurrected by the minister of national security, Robert Montague,

Although there are merits to this strategy, it must be noted that this community-policing effort can't be like in the past, where a district constable resides in a specific community and enforces the law there. The reason for this is very obvious.

Today, crime is far different from 117 years ago and even from 50 years ago. During those periods, we did not have major drug- and gang-related crimes, or easy access to guns. Therefore, putting district constable into the community will have no effect.

Let's face it: We are now in a totally different era. The days of district constables in communities are effectively obsolete.

What we need is to have district constables on a rotated shift from different communities, so at all times the trouble communities would have police present. These district constables should

received good tactical training and instruction in basic counselling in order to respond to residents' needs while tackling criminals when the need arises.

It makes absolutely no sense to have district constables in the community who have to call the regular police at the station at every occurrence of crime. This would certainly undermined the intended purpose and would be tantamount to going round in circles.

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The End