

A BILL

ENTITLED

AN ACT to Amend the Extradition Act to provide for the admission of evidence that would not otherwise be admissible under Jamaican law, in the form of records of evidence of the case in extradition hearings; and for connected matters.

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

1. This Act may be cited as the Extradition (Amendment) Act, 2021, and shall be read and construed as one with the Extradition Act (hereinafter referred to as the “principal Act”) and all amendments thereto.

Short title
and
construction.

Repeal and replacement of section 9 of principal Act.

2. Section 9 of the principal Act is repealed and replaced by the following—

“Arrest for purposes of committal.

9.—(1) A warrant for the arrest of a person accused of an extradition offence, or alleged to be unlawfully at large after conviction of such an offence, may be issued—

- (a) on receipt of an authority to proceed, by a Judge of a Parish Court; or
- (b) without such an authority, by a Judge of a Parish Court upon information that such person is in Jamaica or is believed to be on the way to Jamaica, however, the warrant, if issued under this paragraph, shall be provisional, only.

(2) A warrant of arrest under this section may be issued upon such information as would, in the opinion of the Judge of the Parish Court, authorize the issue of a warrant for the arrest of a person accused of committing a corresponding offence or, as the case may be, of a person alleged to be unlawfully at large after conviction of an offence.

(3) A warrant of arrest issued under this section (whether or not it is a provisional warrant) may without an endorsement to that effect, be executed in any part of Jamaica and may be executed by any person to whom it is directed or by any constable.

(4) Where a provisional warrant is issued, the Judge of the Parish Court by whom it is issued shall, forthwith, give notice of the issue to the Minister, and transmit to the Minister the information and evidence, upon which it was issued; and the Minister may, in any case and shall if the Minister decides not to issue an authority to proceed in respect of the person to whom the warrant relates, by order cancel the warrant

and, if that person has been arrested thereunder, and order the discharge of the person from custody.

(5) For the avoidance of doubt, where a warrant is issued under this section for the arrest of a person accused of an offence of stealing or receiving stolen property, any Judge of a Parish Court shall have the power to issue a warrant to search for the property, whether the offence was committed in the jurisdiction of that Judge or in any part of Jamaica.”.

3. Section 14(1) of the principal Act is amended by—

Amendment
of section
14 of
principal
Act.

- (a) deleting the fullstop at the end of paragraph (c) and substituting therefore a semicolon;
- (b) inserting next after paragraph (c) as amended, the following as paragraph (d)—

“ (d) a record of the evidence of the case against the person, including evidence that would not otherwise be admissible under Jamaican law, shall be admissible in evidence.”.

- (c) inserting next after subsection (4), the following—

“ (5) A record of the evidence of the case against a person, referred to in subsection (1)(d) is admissible in evidence if it is accompanied by—

- (a) an affidavit from an officer of the investigating authority, or of the prosecutor, as the case may be, stating that the record of evidence of the case was prepared by, or under the direction of, that officer or that prosecutor and that the evidence has been preserved for use in the person’s trial; and
- (b) a certificate (bearing an official seal or stamp) by a person described in subsection (6) stating that, in the opinion of that person, the record of the evidence of the case

discloses the existence of evidence that is sufficient under the law of the approved State to justify a prosecution in that State.

- (6) A person referred to in subsection (5)(b) is—
- (a) the Attorney-General or principal law officer of the approved State, or the deputy to or delegate of the Attorney-General or principal law officer of the approved State; or
 - (b) any other person who has, under the law of the approved State, control over the decision to prosecute.
- (7) Nothing in this section limits the evidence that may be admitted at any hearing to determine whether a person is liable to be extradited.
- (8) A court to which a certificate under subsection (5)(c) is produced shall take judicial notice of the signature on it of a person described in subsection (6).
- (9) Without limiting subsections (5), (7) and (8), in any proceedings under this Act where direct oral evidence of a fact or opinion would be admissible, a statement made in any deposition, official certificate, or judicial document taken, given, or made outside Jamaica and tending to establish that fact or opinion is, if duly authenticated, admissible as evidence of that fact or opinion.
- (10) For the avoidance of doubt—
- (a) “record of the evidence of the case” includes—
 - (i) documents, statements or other evidence which describes the identity and probable location of the person sought;
 - (ii) a statement of the facts of the

case, including, if possible, the time and location of the offence;

(iii) a statement of the provisions of the law describing the essential elements and the designation of the offence for which extradition is requested;

(iv) a statement of the provisions of the law prescribing the punishment for the offence;

(v) a statement of the provisions of the law prescribing any time limit on the prosecution or execution of punishment for the offence; and

(vi) any other relevant documents;

(b) "judicial document" means a document which purports to be certified by a judge, magistrate or officer of the Court in or of an approved State.

MEMORANDUM OF OBJECTS AND REASONS

With the aim of modernizing the extradition process under the Extradition Act ("the Act"), the Government considered it prudent to amend the Act in order to use records of evidence of the case through affidavits sworn to by prosecutors or law enforcement personnel, rather than relying exclusively on first person witness affidavits, which are often difficult to secure.

Hearsay evidence is generally inadmissible in court, as a result of the other party's inability to cross-examine the maker of the statement. However, given that extradition hearings are generally based on the premise that the actual trial takes place in the Requesting State, the Judges presiding over extradition proceedings usually use a more liberal approach in admitting evidence presented from the Requesting State. Notwithstanding this liberality, if the hearsay evidence were the only evidence relied on by the Requesting State, then the risk is that the extradition request would be denied.

The amendments to the Act will explicitly allow for the admission of records of evidence of the case, in addition to the other forms of evidence already permitted under the Act.

Additionally, under section 9 of the Act, a Judge of the Parish Court may only issue an arrest warrant to a person accused of an extraditable offence, if the accused is located in the parish of the Judge's jurisdiction. Therefore, the opportunity is being taken to amend the Act to empower any Parish Court Judge to issue an arrest warrant to a person accused of an extraditable offence, irrespective of which parish the person is thought to be located.

DELROY CHUCK
Minister of Justice.



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As introduced by the Honourable Minister of Justice.

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