

BELIZE:

PROTECTION OF WITNESSES BILL, 2022

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BELIZE:

BILL

for

AN ACT to provide for the protection of witnesses in criminal proceedings, by enhancing the ability of a witness to give testimony in judicial proceedings and to cooperate with law enforcement authorities; and to provide for matters connected therewith or incidental thereto.

(Gazetted, 20.....)

BE IT ENACTED, by and with the advice and consent of the House of Representatives and Senate of Belize and by the authority of the same, as follows:

PART I

Preliminary

Short title.

1. This Act may be cited as the

PROTECTION OF WITNESSES ACT, 2022.

Interpretation.

2. In this Act—

“accused”, in relation to any criminal proceedings, means any person charged with an offence to which the proceedings relate, whether or not convicted;

“attorney-at-law” includes Crown Counsel;

“court” means a magistrate’s court, the Supreme Court or the Court of Appeal except where otherwise stated;

“criminal investigation” means an investigation conducted by the police wholly or in part with a view to ascertaining—

- (a) whether a person should be charged with an offence; or
- (b) whether a person charged with an offence is guilty of it;

“eligible” in relation to a witness, means that the witness is eligible for assistance under section 17;

“firearm” has the meaning given in section 2(1) of the Firearms Act and includes an airgun or air pistol; CAP. 143

“imitation firearm” means anything which has the appearance of being a firearm, whether capable of being discharged or not;

“Investigation Anonymity Order” means an order made pursuant to section 4;

“Minister” means the Minister with responsibility for legal affairs;

“offence” means any offence punishable on indictment;

“special measures direction” means a direction under sections 22 to 26;

“weapon of offence” means any article made or adapted for use for causing injury to or incapacitating a person, or intended by the person having it with him for such use;

“witness”, in relation to any criminal proceedings, means any person (without regard for age) who is called, or proposed to be called, to give evidence in those proceedings;

“Witness Anonymity Order” means an order made by a court under section 12 that requires such specified measures to be taken in relation to a witness in criminal proceedings as the court considers appropriate to ensure that the identity of the witness is not disclosed in or in connection with the proceedings.

3. Where any provision of this Act is inconsistent with any other law, or where the exercise of any power conferred by or under this Act would be inconsistent with the exercise of a power conferred by or under any other law, the provisions of this Act shall prevail in so far as there is an inconsistency. Act to prevail.

PART II

Anonymity in Investigations

Investigation
Anonymity
Order.

4.—(1) The Chief Magistrate may grant an Investigation Anonymity Order, in relation to a specified person, prohibiting the disclosure of information—

- (a) that identifies the specified person as a person who is or was able or willing to assist a specified criminal investigation; or
- (b) that might enable the specified person to be identified as such a person.

(2) The prohibition in an Investigation Anonymity Order is subject to sub-sections (3) to (9).

(3) A person who discloses information in contravention of an Investigation Anonymity Order commits an offence and is liable on summary conviction to a fine of twenty thousand dollars or to imprisonment for four years or to both.

(4) A person does not contravene an Investigation Anonymity Order by the disclosure of such information with regards to the specified person described in sub-section (1), if the person disclosing the information does not know and has no reason to suspect that such an order has been made in relation to the specified person in connection with the specified criminal investigation.

(5) A person does not contravene an Investigation Anonymity Order by the disclosure of such information with regards to the specified person described in sub-section (1)(b), if the person disclosing the information does not know and has no reason to suspect that the information disclosed is information that might enable the specified person to be identified as a person of the sort described in sub-section (1)(a) in relation to the specified criminal investigation.

(6) Where, a person knows that another person is aware that the person specified in an Investigation Anonymity Order is a person who is or was able or willing to assist a criminal investigation relating to the offence, and that person discloses to that other person that an Investigation Anonymity Order has been made in relation to the specified person in connection with the criminal investigation of an offence, that person does not contravene the order.

(7) A person, who discloses information to which an Investigation Anonymity Order relates, does not contravene the order if—

- (a) the disclosure is made to a person who is involved in the specified criminal investigation or in the prosecution of an offence to which the investigation relates; and

(b) the disclosure is made for the purposes of the investigation or the prosecution of an offence to which the investigation relates.

(8) A person does not contravene an Investigation Anonymity Order by—

(a) a disclosure in pursuance of a requirement imposed by any law; or

(b) a disclosure made in pursuance of an order of a court.

(9) A person who discloses such information as regards another person as is described in sub-section (1) may not rely on sub-section (8) in a case where—

(a) it might have been determined that the person was required or permitted to withhold the information, whether on grounds of public interest or on other grounds; and

(b) the person disclosed the information without there having been a determination as to whether the person was required or permitted to withhold the information,

and the disclosure for the purposes of seeking such a determination is not a contravention of an Investigation Anonymity Order.

(10) In this section “specified” means specified in the Investigation Anonymity Order concerned.

5.—(1) An application for an Investigation Anonymity Order may be made in the prescribed form to the Chief Magistrate by—

Application for Investigation Anonymity Order.

(a) the Commissioner of Police; or

(b) the Director of Public Prosecutions.

(2) An applicant for an Investigation Anonymity Order shall not be required to give notice of the application to—

(a) a person who is suspected of having committed or who has been charged with an offence to which the criminal investigation relates; or

(b) that person's attorney-at-law.

(3) An applicant for an Investigation Anonymity Order shall, unless the Chief Magistrate directs otherwise, inform the Chief Magistrate of the identity of the person who would be specified in the order.

(4) The Chief Magistrate may determine a written application without a hearing.

(5) If the Chief Magistrate determines an application for an Investigation Anonymity Order without a hearing, the Chief Magistrate shall notify the applicant of the determination.

(6) If a hearing takes place for the application to be determined, the hearing must take place in chambers.

Conditions for making an order.

6.—(1) The Chief Magistrate may make an Investigation Anonymity Order if satisfied that there are reasonable grounds for believing that—

- (a) an offence has been committed;
- (b) the person who would be specified in the order has reasonable grounds for fearing intimidation or harm if identified as a person who is or was able or willing to assist the criminal investigation as it relates to the offence;
- (c) the person who would be specified in the order—
 - (i) is able to provide information that would assist the criminal investigation as it relates to the offence; and
 - (ii) is more likely than not, as a consequence of the making of the order, to provide such information; and
- (d) the person likely to have committed the offence is likely to have been a member of a group falling within sub-section (2) at the time the offence was committed.

(2) A group falls within this sub-section if—

- (a) it is possible to identify the group from the criminal activities that its members appear to engage in; and
- (b) it appears that the majority of the persons in the group are at least twelve years of age.

(3) If it is suspected that the offence was committed by two or more persons, it is sufficient, for the purposes of sub-section (1), that the Chief Magistrate is satisfied that there are reasonable grounds for believing that the

conditions in sub-section (1) (a), (b), (c) and (d) are satisfied in relation to one person.

7.—(1) Where the Chief Magistrate refuses an application for an Investigation Anonymity Order, the applicant may appeal to the Supreme Court against that refusal.

Appeal against refusal to make an order.

(2) An applicant may not appeal under sub-section (1) unless the applicant indicates—

(a) in the application for the order; or

(b) if there is a hearing of the application before the magistrate, at the hearing,

that the applicant intends to appeal a refusal.

(3) If an applicant has indicated an intention to appeal a refusal, a magistrate who refuses an application for an Investigation Anonymity Order shall nevertheless make the order as requested by the applicant.

(4) An order made under sub-section (3) has effect until the appeal is determined or otherwise disposed of.

(5) The Supreme Court Judge to whom an appeal is made shall consider afresh the application for an Investigation Anonymity Order and section 5(3) to (5) applies accordingly to the determination of the application by the judge.

8.—(1) The Chief Magistrate may discharge an Investigation Anonymity Order if it appears to the Chief Magistrate to be appropriate to do so.

Discharge of order.

(2) The Chief Magistrate may discharge an Investigation Anonymity Order on an application by the person on whose application the order was made or any person specified in the order.

(3) An application may not be made under sub-section (2) unless there has been a material change of circumstances since the relevant time.

(4) Any person eligible to apply for the discharge of the order is entitled to be party to the proceedings on the application in addition to the applicant.

(5) If an application to discharge an Investigation Anonymity Order is made by a person other than the person specified in the order, the Chief Magistrate may not determine the application unless—

- (a) the person specified in the order has had an opportunity to oppose the application; or
- (b) the Chief Magistrate is satisfied that it is not reasonably practicable to communicate with the person specified in the order.

(6) A party to these proceedings may appeal to a Supreme Court Judge against the Chief Magistrate’s decision.

(7) If during the proceedings a party indicates an intention to appeal against a determination to discharge the Investigation Anonymity Order, the Chief Magistrate shall provide for the discharge of the order not to have effect until the appeal is determined or otherwise disposed of.

(8) In this section “the relevant time” means—

- (a) the time when the order was made; or
- (b) if a previous application has been made under sub-section (2), the time when the application, or the last application, was made.

PART III

Witness Anonymity

Common law rules.

9.—(1) The common law rules relating to the power of a court to make an order for securing that the identity of a witness in criminal proceedings is withheld from the accused or, on an accused’s application, from another accused, are abolished.

(2) Nothing in this Part affects the common law rules as to the withholding of information on the grounds of preventing harm to the public interest.

Measures for Witness Anonymity Order.

10. The measures that may be required to be taken in relation to a witness by a Witness Anonymity Order include measures for securing that—

- (a) the name and other identifying details of the witness may be—
 - (i) withheld; and
 - (ii) removed from materials disclosed to any party to the proceedings;
- (b) the witness may use a pseudonym;

- (c) the witness is not asked questions of any specified description that might lead to the identification of the witness;
- (d) the witness is screened to any specified extent; and
- (e) the voice of the witness is subjected to modulation to any specified extent.

11.—(1) An application for a Witness Anonymity Order in relation to a witness in criminal proceedings may be made in the prescribed form to the court by the prosecutor or the accused.

Application for
Witness
Anonymity
Order.

(2) Where an application is made by the prosecutor, the prosecutor shall, unless the court directs otherwise, inform the court of the identity of the witness, but is not required to disclose in connection with the application—

- (a) the identity of the witness to any other party to the legal proceedings or his attorney-at-law; or
- (b) any information that might enable the witness to be identified to any other party to the proceedings or his attorney-at-law.

(3) Where an application is made by the accused, the accused shall inform the court and the prosecutor of the identity of the witness but if there is more than one accused, the accused is not required to disclose to any other accused or his attorney-at-law, in connection with the application—

- (a) the identity of the witness; or
- (b) any information that might enable the witness to be identified.

(4) Where the prosecutor or the accused proposes to make an application under this section in respect of a witness, any relevant material which is disclosed by or on behalf of that party before the determination of the application may be disclosed in such a way as to prevent—

- (a) the identity of the witness; or
- (b) any information that might enable the witness to be identified,

from being disclosed except as required by sub-section (2)(a) or (3)(a).

(5) In this section “relevant material” means any document or other material which falls to be disclosed, or is sought to be relied on, by or on

behalf of the party concerned in connection with the proceedings or proceedings preliminary to them.

(6) Subject to sub-section (7), the court shall give every party to the proceedings the opportunity to be heard on an application under this section.

(7) Sub-section (6) does not prevent the court from hearing one or more parties in chambers and in the absence of an accused and his attorney-at-law, if it appears to the court to be appropriate to do so in the circumstances of the case.

Conditions for making order.

12.—(1) Where an application is made for a Witness Anonymity Order to be made in relation to a witness in criminal proceedings, the court may make such an order only if it is satisfied that—

- (a) the measures to be specified in the order are necessary—
 - (i) in order to protect the safety of the witness or another person or to prevent any serious damage to property; or
 - (ii) in order to prevent real harm to the public interest, whether affecting the carrying on of any activities in the public interest or the safety of a person involved in carrying on such activities, or otherwise;
- (b) having regard to all the circumstances, the taking of those measures would be consistent with the accused receiving a fair trial; and
- (c) it is necessary to make the order in the interest of justice by reason of the fact that it appears to the court that,
 - (i) it is important that the witness should testify; and
 - (ii) the witness will not testify if the order is not made.

(2) In determining whether the measures to be specified in the order are necessary for the purpose mentioned in sub-section (1)(a)(i), the court shall have regard in particular to any reasonable fear on the part of the witness—

- (a) that the witness or another person would suffer death or injury; or
- (b) that there would be serious damage to property,

if the witness were to be identified.

13.—(1) When deciding whether the conditions specified under section 12(1) are met in the case of an application for a Witness Anonymity Order, the court shall have regard to—

Relevant considerations.

- (a) the considerations mentioned in sub-section (2); and
 - (b) such other matters as the court considers relevant.
- (2) The considerations referred to in sub-section (1)(a) are—
- (a) the general right of an accused in criminal proceedings to know the identity of a witness in the proceedings;
 - (b) the extent to which the credibility of the witness concerned would be a relevant factor when the weight of his evidence comes to be assessed;
 - (c) whether evidence given by the witness might be the sole or decisive evidence implicating the accused;
 - (d) whether the evidence of the witness could be properly tested, whether on grounds of credibility or otherwise, without his identity being disclosed;
 - (e) whether there is any reason to believe that the witness—
 - (i) has a tendency to be dishonest; or
 - (ii) has any motive to be dishonest in the circumstances of the case, having regard, in particular, to any previous convictions of the witness and to any relationship between the witness and the accused or any associates of the accused; and
 - (f) whether it would be reasonably practicable to protect the identity of the witness by any means other than by making a Witness Anonymity Order specifying the measures that are under consideration by the court.

14.—(1) A court that has made a Witness Anonymity Order in relation to any criminal proceedings may—

Discharge or variation of order.

- (a) vary or discharge the order on an application made by a party to the proceedings if there has been a material change of circumstances since the relevant time; or
- (b) on its own initiative, subsequently discharge or vary, or further vary, the order if it appears to the court to be

appropriate to do so in view of the provisions of sections 12 and 13 that applied to the making of the order.

- (2) In sub-section (1), “relevant time” means—
- (a) the time when the order was made; or
 - (b) if a previous application has been made under sub-section (2), the time when the application or the last application was made.

Warning to jury about Witness Anonymity Order.

15. On a trial on indictment with a jury, where any evidence is given by a witness at a time when a Witness Anonymity Order applied to the witness, the judge shall give the jury such warning as the judge considers appropriate to ensure that the fact that the order was made in relation to the witness does not prejudice the accused.

Privacy as to precise address of witness.

16.—(1) In any proceedings, the precise particulars of an address of the witness, for example, details of the street and number, may not, without the permission of the court, be—

- (a) the subject of any question to a witness or included in any evidence given; or
- (b) included in any statement or remark made by a witness, attorney-at-law, officer of the court, or any other person.

(2) The court shall not grant permission under sub-section (1) unless satisfied that the question to be put, the evidence to be given, or the statement or remark to be made, is of sufficient direct relevance to the facts in issue that to exclude it would be contrary to the interest of justice.

(3) An application for permission under sub-section (1) may be made before or after the commencement of any hearing, and is, where practicable, to be made and dealt with in chambers.

(4) Nothing in sub-section (1) applies in a criminal proceedings if it is necessary to disclose the particulars in the charge in order to ensure that the accused is fully and fairly informed of the charge.

PART IV

Special Measures

17.—(1) For the purposes of this Part, a witness in criminal proceedings, other than the accused, is eligible for a special measures direction under this section if the court is satisfied that the quality of evidence given by the witness is likely to be diminished by reason of fear or distress on the part of the witness testifying in the proceedings.

Witnesses eligible for assistance on grounds of fear or distress about testifying.

(2) In determining whether a witness falls within sub-section (1), the court shall take into account—

- (a) the nature and alleged circumstances of the offence to which the proceedings relate;
- (b) the age of the witness;
- (c) any of the following matters the court considers to be relevant—
 - (i) the social and cultural background and ethnic origin of the witness;
 - (ii) the domestic and employment circumstances of the witness; and
 - (iii) any religious beliefs or political opinions of the witness;
- (d) any behaviour towards the witness on the part of—
 - (i) the accused;
 - (ii) members of the family or associates of the accused; or
 - (iii) any other person who is likely to be an accused or a witness in the proceedings.
- (e) any views expressed by the witness.

(3) Where the complainant in respect of a sexual offence is a witness in proceedings relating to that offence, or that offence along with any other offence, the witness is eligible for assistance in relation to those proceedings by virtue of this sub-section unless the witness has informed the court of the witness's wish not to be so eligible by virtue of this sub-section.

18.—(1) For the purposes of this Part, a witness in criminal proceedings, other than the accused, is eligible for a special measures direction by virtue of this section if—

Witnesses eligible for assistance on grounds of age or incapacity.

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- (a) it appears to the court that they are under the age of 18 at the time of the hearing; or
 - (b) the court considers that the quality of evidence given by the witness is likely to be diminished by reason of any circumstances falling within sub-section (2).
- (2) The circumstances falling within this sub-section are—
- (a) that the witness—
 - (i) suffers from mental disorder; or
 - (ii) otherwise has a significant impairment of intelligence and social functioning; or
 - (b) that the witness has a physical disability or is suffering from a physical disorder.
- (3) In sub-section (1)(a) “the time of the hearing”, in relation to a witness, means the time when the hearing comes before the court for a determination in relation to the witness’s eligibility for special measures.
- (4) In determining whether a witness falls within sub-section (1)(b) the court shall consider any views expressed by the witness.
- (5) In this section, a reference to the quality of a witness's evidence is a reference to its quality in terms of completeness, coherence and accuracy.
- (6) For the purposes of this section, “coherence” refers to a witness's ability in giving evidence to give answers which address the questions put to the witness and which can be understood both individually and collectively.

Special measures direction relating to eligible witness.

- 19.—(1)** This section applies where in any criminal proceedings—
- (a) a party to the proceedings makes an application for the court to give a direction under this section in relation to a witness in the proceedings other than the accused; or
 - (b) the court of its own motion raises the issue whether such a direction should be given.
- (2) Where the court determines that the witness is eligible for a special measures direction under section 17 or 18, the court may make a special measures direction for any, all or a combination of the special measures in this Part on the condition that the court is satisfied that the measures—
- (a) are available; and

(b) would be likely to improve the quality of evidence given by the witness.

(3) In determining whether any special measure or measures would or would not be likely to improve the quality of evidence given by the witness, the court shall consider all the circumstances of the case, including—

(a) any views expressed by the witness; and

(b) whether the measure or measures might tend to inhibit such evidence being effectively tested by a party to the proceedings.

(4) A special measures direction must specify the relevant special measures to be taken and the circumstances in which they are to apply to the evidence of the witness.

(5) Nothing in this Part is to be regarded as affecting any power of a court to make an order to give leave of any description in the exercise of its inherent jurisdiction or otherwise in relation to—

(a) a witness who is not an eligible witness; or

(b) an eligible witness where, the order is made or the leave is given otherwise than by reason of the fact that the witness is an eligible witness.

20. Subject to section 21, a special measures direction has binding effect from the time it is made until the proceedings for the purposes of which it is made are either—

Effect of special measures direction.

(a) determined by acquittal, conviction or otherwise; or

(b) abandoned,

in relation to the accused or, if there is more than one, in relation to each of the accused.

21.—(1) The court may discharge, vary or further vary a special measures direction if it appears to the court to be in the interest of justice to do so, and may do so either—

Discharge or variation of special measures direction.

(a) on the application made by a party to the proceedings, if there has been a material change of circumstances since the relevant time; or

(b) on its own motion.

- (2) In sub-section (1) “relevant time” means–
 - (a) the time when the direction was given; or
 - (b) if a previous application has been made, the time when the application, or last application was made.
- (3) The court shall state in open court its reasons for–
 - (a) giving or varying a special measures direction;
 - (b) refusing an application for, or for the variation or discharge of a special measures direction; or
 - (c) discharging a special measures direction.
- (4) The Chief Justice may make rules of court for–
 - (a) uncontested special measures applications to be determined by the court without a hearing;
 - (b) preventing the renewal of an unsuccessful application for a special measures direction except where there has been a material change of circumstances;
 - (c) expert evidence to be given in connection with an application for, or for varying or discharging, such a direction; and
 - (d) the manner in which confidential or sensitive information is to be treated in connection with an application referred to in sub-section (4)(c) and in particular, to such information being disclosed to, or withheld from, a party to the proceedings.

Screening
witness from
accused.

22.–(1) A special measures direction may provide that the witness be prevented from seeing the accused by means of a screen or other arrangement while giving testimony or being sworn in court.

(2) The screen or other arrangement referred to in sub-section (1) must not prevent the witness from being able to see, and to be seen by–

- (a) the Judge and the Jury, if there is one;
- (b) attorneys-at-law acting in the proceedings; and
- (c) any interpreter or other person appointed, in pursuance of the direction or otherwise, to assist the witness.

23.—(1) A special measures direction may provide for the exclusion of persons of any description specified in the direction from being in court during the giving of the evidence of a witness.

Evidence in private.

- (2) The persons who may be so excluded do not include—
- (a) the accused;
 - (b) attorneys-at-law acting in the proceedings; or
 - (c) any interpreter or other person appointed to assist the witness.

24.—(1) A special measures direction may provide for a video recording of an interview of the witness to be admitted as evidence in chief.

Video recorded evidence.

(2) Notwithstanding sub-section (1), a special measures direction may not provide for a video recording, or a part of a recording if the court is of the opinion, having regard to all the circumstances of the case, that in the interest of justice the recording, or that part of it, should not be admitted.

(3) For the purposes of sub-section (2), in considering whether any part of a recording should not be admitted under this section, the court shall consider whether any prejudice to the accused which might result from that part being so admitted is outweighed by the desirability of showing the whole, or substantially the whole, of the recorded interview.

(4) Where a special measures direction provides for a recording to be admitted under this section, the court may subsequently direct that it is not to be admitted if—

- (a) it appears to the court that—
 - (i) the witness will not be available for cross-examination, whether conducted in the ordinary way or in accordance with any direction; and
 - (ii) the parties to the proceedings have not agreed that there is no need for the witness to be so available; or
- (b) any rules of court requiring disclosure of the circumstances in which the recording was made have not been complied with to the satisfaction of the court.

(5) Where a recording is admitted under this section—

- (a) the witness shall be called by the party tendering it in evidence, unless—

- (i) a special measures direction provides for the evidence of the witness on cross-examination to be given otherwise than by testimony in court; or
 - (ii) the parties to the proceedings have agreed as mentioned in sub-section (4)(a)(ii); and
- (b) the witness may not without the permission of the court give evidence in chief otherwise than by means of the recording as to any matter which, in the opinion of the court, has been dealt with in the recorded testimony of the witness.

(6) Where in accordance with sub-section (2) a special measures direction provides for only part of a recording to be admitted under this section, references in sub-sections (4) and (5) to the recording or to the recorded testimony of the witness are references to the part of the recording or testimony which is to be so admitted.

(7) The court may give permission for the purposes of sub-section (5)(b) if it appears to the court to be in the interest of justice to do so, and may do so either—

- (a) on an application by a party to the proceedings; or
- (b) on its own motion.

Video recorded
cross-examination or
re-examination.

25.—(1) Where a special measures direction provides for a video recording to be admitted under section 24 as evidence in chief of the witness, the direction may provide—

- (a) for any cross-examination of the witness, and any re-examination, to be recorded by means of a video recording; and
- (b) for such a recording to be admitted, so far as it relates to any such cross-examination or re-examination, as evidence of the witness under cross-examination or on re-examination, as the case may be.

(2) Such a recording shall be made in the presence of such persons as the direction provides and in the absence of the accused, in circumstances in which—

- (a) the Judge and any attorneys-at-law acting in the proceedings are able to see and hear the examination of the witness and to communicate with the persons in whose presence the recording is being made; and

- (b) the accused is able to see and hear any such examination and to communicate with any attorney-at-law acting for him.

(3) A direction under this section shall not be made in circumstances where the accused has no attorney-at-law acting on his behalf in the proceedings.

26.—(1) A special measures direction may provide for any examination of the witness, however and wherever conducted, to be conducted through an intermediary or other person approved by the court for the purposes of this section.

Examination of witness through intermediary.

(2) The functions of an intermediary are to—

(a) communicate—

(i) to the witness, questions put to the witness; and

(ii) to any person asking the questions, the answers given by the witness in reply to such questions; and

(b) explain such questions or answers so far as necessary to enable them to be understood by the witness or person in question.

(3) Any examination of the witness under sub-section (1) shall take place in the presence of such persons as rules of court or the direction may provide, and in circumstances in which—

(a) the Magistrate or Judge and attorneys-at-law acting in the proceedings are able to see and hear the examination of the witness and to communicate with the intermediary; and

(b) except in the case of a video recorded examination, the jury, if there is one, is able to see and hear the examination of the witness.

(4) Where two or more attorneys at law are acting for a party to the proceedings, sub-section (3)(a) is to be regarded as satisfied in relation to those representatives if at all material times it is satisfied in relation to at least one of them.

(5) A person shall not act as an intermediary in a particular case except after making a declaration, in the form prescribed by rules of court, that he will faithfully perform his function as intermediary.

(6) Sub-section (1) does not apply to an interview of the witness which is recorded by means of a video recording with a view to its admission as evidence in chief of the witness.

(7) A special measures direction may provide for such a recording referred to in sub-section (6) to be admitted if the interview was conducted through an intermediary and—

- (a) that person complied with sub-section (5) before the interview began; and
- (b) the court's approval for the purposes of this section is given before the direction is given.

Status of evidence.

27.—(1) Sub-sections (2) to (4) apply to a statement made by a witness in proceedings under this Act which, in accordance with a special measures direction, is not made by the witness in direct oral testimony in court but forms part of the evidence of the witness in the proceedings.

(2) The statement shall be treated as if made by the witness in direct oral testimony in court and the statement is—

- (a) admissible evidence of any fact of which such testimony from the witness would be admissible; and
- (b) not capable of corroborating any other evidence given by the witness.

(3) Sub-section (2) applies to a statement admitted under section 24 or which is not made by the witness on oath even though it would have been required to be made on oath if made by the witness in direct oral testimony in court.

(4) In estimating the weight, if any, to be attached to the statement, the court shall have regard to all the circumstances from which an inference can reasonably be drawn, as to the accuracy of the statement or otherwise.

(5) In this section “statement” includes any representation of fact, whether made in words or otherwise.

Warning to jury on special measures direction.

28. Where on a trial evidence has been given in accordance with a special measures direction, the judge shall give the jury such warning, if any, as the judge considers necessary to ensure that the fact that the direction was given in relation to the witness does not prejudice the accused.

29.—(1) The prosecutor may make an application for the court to give a direction under this section in relation to a witness.

(2) The court may of its own motion raise the issue whether such a direction should be given.

(3) The court may give a direction prohibiting the accused from cross-examining, or further cross-examining the witness in person if it appears to the court—

- (a) that the quality of evidence given by a witness on cross-examination—
 - (i) is likely to be diminished if the cross-examination, or further cross-examination is conducted by the accused in person; and
 - (ii) would be likely to be improved if a direction were given under this section; and
- (b) that it would be in the interest of justice to give such a direction.

(4) In determining whether sub-section (3)(a) applies in the case of a witness the court shall have regard to—

- (a) any views expressed by the witness as to whether or not the witness is content to be cross-examined by the accused in person;
- (b) the nature of the questions likely to be asked, having regard to the issues in the proceedings and the defence case advanced so far, if any;
- (c) any behavior on the part of the accused at any stage of the proceedings, both generally and in relation to the witness; and
- (d) any relationship, of whatever nature, between the witness and the accused.

(5) For the purposes of this section “witness” in relation to an accused, does not include any other person who is charged with a crime in the proceedings.

(6) A direction under this section is to be treated as a special measures direction for the purpose of sections 20 and 21 under this Part.

Direction prohibiting accused from cross-examining particular witness.

Representation
of the accused
for purposes of
cross-
examination.

30.—(1) This section applies where an accused is prevented from cross-examining a witness in person under section 29.

(2) Where it appears to the court that this section applies, it shall—

(a) invite the accused to arrange for an attorney-at-law to act for him for the purposes of cross-examining the witness; and

(b) require the accused to notify the court, by the end of such period as it may specify, whether an attorney-at-law is to act for him for that purpose.

(3) If by the end of the period mentioned under sub-section (2)(b) either—

(a) the accused has notified the court that no attorney-at-law is to act for him for the purpose of cross-examining the witness; or

(b) no notification has been received by the court and it appears to the court that no attorney-at-law is to so act,

the court shall consider whether it is necessary in the interest of justice for the witness to be cross-examined by an attorney-at-law appointed to represent the interests of the accused.

(4) If the court decides that it is necessary in the interest of justice for the witness to be cross-examined, the court shall appoint a qualified attorney-at-law, chosen by the court, to cross-examine the witness in the interest of the accused.

(5) A person appointed under sub-section (4) is not responsible to the accused.

(6) The Chief Justice may make rules of court—

(a) as to the time when, and the manner in which, sub-section (2) is to be complied with; and

(b) in connection with the appointment of an attorney-at-law under sub-section (4), and in particular for securing that person so appointed is provided with evidence or other material relating to the proceedings.

Warning to jury
on prohibition
from cross-
examining
witness.

31. Where on a trial an accused is prevented from cross-examining a witness in person under section 29, the judge shall give the jury such warning, if any, as the judge considers necessary to ensure that the accused is not prejudiced—

-
- (a) by any inferences that might be drawn from the fact that the accused has been prevented from cross-examining the witness in person; and
 - (b) where the witness has been cross-examined by an attorney-at-law appointed under section 30(4), by the fact that the cross-examination was carried out by such an attorney-at-law and not by a person acting as the attorney-at-law of the accused.

PART V

Miscellaneous

32. The forms contained in the Schedule are, wherever reasonably practicable, to be used in relation to the applications to which they correspond. Forms.

33.—(1) This Act shall come into force on a date appointed by the Minister by Order published in the Gazette. Commencement.

(2) An Order under sub-section (1) may appoint different dates for the commencement of different provisions of this Act.

SCHEDULE

FORM 1
[section 5(1)]**APPLICATION FOR AN INVESTIGATION ANONYMITY
ORDER****IN THE****[NAME OF COURT]**

[DPP or Commissioner of Police]

Applicant

(1) Application is made that there are reasonable grounds for believing that the following conditions are met.

(a) That the following offence has been committed:

(b) That the person who would be specified in the order has reasonable grounds for -

fearing intimidation or harm if identified as a person who is or was able or willing to assist the criminal investigation as it relates to the offence – PLEASE DETAIL

(c) That the person who would be specified in the order,

is able to provide information that would assist the criminal investigation as it relates to the offence – PLEASE DETAIL; and

is more likely than not, as a consequence of the making of the order, to provide such information;

(d) That the person likely to have committed the offence is,

a person who was at least sixteen years of age at the time the offence was committed;

- (e) That the person likely to have committed the offence is likely to have been ,
- a member of a group falling within section 8 (3) at the time the offence was committed.
 - the offence was committed by two or more persons

An investigation anonymity order is applied for.

[Signed]

Applicant

FORM 3
[section 8]

**APPLICATION TO DISCHARGE INVESTIGATION
ANONYMITY ORDER**

IN THE
[NAME OF COURT]

[name]

Applicant

v

[name]

Accused

Application is made that a material change of circumstances [since the time when the Investigation Anonymity Order was made] or [if a previous application had been made, the time when the application was made or the last application was made].

STATE PARTICULARS OF MATERIAL CHANGE:

A discharge of the Investigation Anonymity Order is applied for.

[Signed]

Applicant

FORM 4
[section 7]

**NOTICE OF APPEAL AGAINST REFUSAL TO MAKE AN
INVESTIGATION ANONYMITY ORDER**

IN THE

[NAME OF COURT]

[DPP or Commissioner of Police]

Applicant

- (1) Notice was given to the magistrate at the hearing on [confirm date] when the investigation anonymity was refused that the applicant intends to appeal
- (2) There are reasonable grounds for believing that the following conditions are met.
- (a) That the following offence has been committed:
[list offence(s)]
 - (b) That the person who would be specified in the order has reasonable grounds for,
 - fearing intimidation or harm if identified as a person who is or was able or willing to assist the criminal investigation as it relates to the offence – PLEASE DETAIL
 - (c) That the person who would be specified in the order –
 - is able to provide information that would assist the criminal investigation as it relates to the offence – PLEASE DETAIL; and
 - is more likely than not, as a consequence of the making of the order, to provide such information;
 - (d) That the person likely to have committed the offence is –

- a person who was at least sixteen years of age at the time the offence was committed;
- (e) That the person likely to have committed the offence is likely to have been –
 - a member of a group falling within section 5 (3) at the time the offence was committed; or
 - the offence was committed by two or more persons

An Investigation Anonymity Order is applied for.

[Signed]

Applicant

FORM 5*[section 11(1)]***APPLICATION FOR WITNESS ANONYMITY ORDER****IN THE****[NAME OF COURT]**

[name]

Applicant

v

[name]

Accused

Application is made that a Witness Anonymity Order is necessary for the measures below (check boxes as appropriate) to be used—

- Name and other identifying details of the witness are withheld and removed from materials disclosed to any party to the proceedings
- Witness use a pseudonym
- Witness is not asked questions of [specify description of questions] that might lead to the identification of the witness
- Witness is screened to [specify extent]
- Voice of the witness is subject to modulation to [specify extent]

in order to protect the safety of the witness [name of witness] or [name of another person] or to prevent any serious damage to property or to prevent real harm to the public interest, whether affecting the carrying on of any activities in the public interest or the safety of a person involved in carrying on such activities, or otherwise;

and

having regard to all the circumstances, the taking of the measures above would be consistent with the accused receiving a fair trial;

and

it is necessary to make the order in the interest of justice by reason of the fact that it appears to the court that (a) it is important that the witness should testify and the witness would not testify if the order was not made.

A Witness Anonymity Order is applied for.

[Signed]

Applicant

FORM 6*[section 12(1)]***WITNESS ANONYMITY ORDER****IN THE****[NAME OF COURT]**

[name]

Applicant

v

[name]

Accused

Whereas I am satisfied by an application of (*name of prosecutor or accused*), that in order to protect the safety of the witness [name of witness] or [name of another person] or to prevent any serious damage to property or to prevent real harm to the public interest, whether affecting the carrying on of any activities in the public interest or the safety of a person involved in carrying on such activities, or otherwise;

and

having regard to all the circumstances, the taking of the measures below would be consistent with the accused receiving a fair trial;

and

it is necessary to make the order in the interest of justice by reason of the fact that it appears to the court that (a) it is important that the witness should testify and the witness would not testify if the order was not made.

It is hereby ordered that the measures below (check boxes as appropriate) are used –

- Name and other identifying details of the witness are withheld and removed from materials disclosed to any party to the proceedings
- Witness use a pseudonym

- Witness is not asked questions of [specify description of questions] that might lead to the identification of the witness
- Witness is screened to [specify extent]
- Voice of the witness is subject to modulation to [specify extent].

Dated this day of , 20

[Signed]

Magistrate or judge.

FORM 7*[section 14(1)(a)]***APPLICATION TO DISCHARGE OR VARY WITNESS
ANONYMITY ORDER****IN THE****[NAME OF COURT]**

[name]

Applicant

v

[name]

Accused

Application is made that a material change of circumstances [since the time when the Witness Anonymity Order was made] or [if a previous application had been made, the time when the application was made or the last application was made].

State particulars of material change.

A discharge or variation of the Witness Anonymity Order is applied for.

[Signed]

Applicant

FORM 8
[section 19(1)(a)]

APPLICATION FOR A SPECIAL MEASURES DIRECTION

IN THE
[NAME OF COURT]

[name]

Applicant

v

[name]

Accused

Application is made that the witness [name of witness and date of birth] is eligible for a special measures direction because of fear or distress /age / incapacity [delete as appropriate and give details and, if appropriate, explain why the quality of the evidence for the witness is likely to be diminished because of that].

Explain why special measures would be likely to improve the quality of the evidence of the witness.

Which measure(s) would be likely to maximize so far as practicable the quality of the evidence of the witness? (check boxes as appropriate)

- Evidence in private
- Video recorded evidence
- Video recorded cross-examination or re-examination
- Intermediary
- Aids to communication

Tick which you propose.

Evidence in private (complete if special measures direction is for evidence in private)

Explain on what grounds you want the witness to give evidence in private.

Video recorded interview as evidence in chief (complete if special measures direction is for video recorded interview as evidence in chief)

When was the interview ? (date)

Was the interview conducted through an intermediary ?

No Yes If yes, complete

Was any aid to communication used in conducting the interview ?

No Yes If yes, complete

How long is the full version of the recording ? (hours/minutes)

Has an edited version been prepared for use in evidence ?

No Yes

When did you serve:

(a) the full version? (date)

(b) the edited version (if any)? (date)

Do you want the court's permission for the witness to give evidence in chief otherwise than by means of the recording ?

No Yes If yes, explain why.

A special measures direction is applied for.

Dated this day of , 20

[Signed]

Prosecutor or accused/

accused's attorney-at-law

FORM 9*[section 29(1)]***APPLICATION FOR DIRECTION PROHIBITING ACCUSED
FROM CROSS-EXAMINING PARTICULAR WITNESS****IN THE****[NAME OF COURT]**

[name]

Applicant

v

[name]

Accused

Application is made that the quality of evidence given by the witness [name of witness] on cross-examination is likely to be diminished if cross-examination, or further cross-examination is conducted by the accused in person and would be likely to be improved if a direction were given and that it would not be contrary to the interest of justice to give the direction.

A direction prohibiting the accused from cross-examining the witness [name of witness] is applied for.

[Signed]

Applicant

FORM 10

[section 21(1)(a)]

APPLICATION TO DISCHARGE DIRECTION

[NAME OF COUNTRY]

IN THE

[NAME OF COURT]

[name]

Applicant

v

[name]

Accused

Application is made that [a material change of circumstances since the time when the direction prohibiting the accused from cross-examining the witness was given] or [if a previous application had been made, the time when the application or the last application was made].

A discharge or variation of the direction prohibiting the accused from cross-examining the witness [name of witness] is applied for.

[Signed]

Applicant