

ACT NO. 13 OF 2003



I assent.

[L.S.]

J. I. ULUIVUDA
President

[18 September, 2003]

AN ACT

TO AMEND THE CRIMINAL PROCEDURE CODE

ENACTED by the Parliament of the Fiji Islands—

Short title, etc

- 1.—(1) This Act may be cited as the Criminal Procedure Code (Amendment) Act 2003.
- (2) This Act comes into force on a date appointed by the Minister by notice in the *Gazette*.
- (3) In this Act, the Criminal Procedure Code (Cap. 21) is referred to as the Code.

Section 2 amended

2. Section 2 of the Code is amended—

- (a) by repealing the definition of “preliminary investigation”; and
- (b) by adding the following definitions—

“charge” means an official notification to a person by a competent authority that the person is accused of committing an offence and that the person is required to appear in a magistrates’ court to answer the charge;”;

“information” means a written charge preferred by the State against an accused person for the purpose of the trial of the accused person in the High Court;”.

168 *Criminal Procedure Code (Amendment) — 13 of 2003*

Section 7 amended

3. Section 7 of the Code is amended—

- (a) in paragraph (a) by deleting “five years” and substituting “ten years”; and
- (b) in paragraph (b) by deleting “one thousand” and substituting “\$15,000”.

Section 128 repealed

4. The Code is amended by repealing section 128.

Section 149 repealed

5. The Code is amended by repealing section 149.

Section 153 amended

6. Section 153(1) of the Code is amended in paragraph (b)—

- (a) by deleting “in cases which are subject of a preliminary investigation by a magistrates’ court and of a trial by the High Court” and substituting “in cases which have been transferred to the High Court by a magistrates’ court, ”; and
- (b) by repealing subparagraphs (i) and (iii).

Section 220 amended

7. Section 220 of the Code is amended—

- (a) by deleting “commencement of the” and substituting “calling of evidence at”; and
- (b) by deleting “in lieu thereof he shall hold a preliminary inquiry in accordance with the provisions hereinafter contained, and in such cases the provisions of section 235 shall not apply” and substituting “shall transfer the case to the High Court under Part VII.”

Section 222 substituted

8. Section 222 of the Code is repealed and substituted by the following section—

“Transfer to High Court for sentence.

222—(1) Where—

- (a) a person over the age of 17 years is convicted by a resident magistrate for an offence; and
- (b) the magistrate is of the opinion (whether by reason of the nature of the offence, the circumstances surrounding its commission or the previous history of the accused person) that the circumstances of the case are such that greater punishment should be imposed in respect of the offence than the magistrate has power to impose,

the magistrate may, by order, transfer the person to the High Court for sentencing under Part VII.

(2) If the person is transferred under subsection (1) to the High Court, a copy of the order for transfer and of the charge in respect of which the person was convicted shall be sent to the Chief Registrar of the High Court.

(3) The High Court shall enquire into the circumstances of the case and may deal with the person in any manner in which the person could be dealt with if the person had been convicted by the High Court.

(4) A person transferred to the High Court under this section has the same right of appeal to the Court of Appeal as if the person had been convicted and sentenced by the High Court.

(5) The High Court, after hearing state counsel if the counsel desires to be heard, may remit the person transferred for sentence in custody or on bail to the Magistrates' Court which originally transferred the person to the High Court and thereafter the person shall be dealt with by the Magistrates' Court and the person has the same right of appeal as if no transfer to the High Court had occurred."

Part VII substituted

9. Part VII of the Code is repealed and substituted by the following Part—

**"PART VII -- PROVISIONS RELATING TO THE TRANSFER
OF ACCUSED PERSONS TO THE HIGH COURT**

Power to transfer to the High Court

223. A resident magistrate may transfer any charges or proceedings to the High Court.

Preliminary enquiry and committal proceedings abolished

224. An accused person shall not be subject to a preliminary enquiry or to committal proceedings prior to transfer to the High Court for trial.

Guilty plea to offence triable in the High Court

225.—(1) A magistrate has jurisdiction to accept a guilty plea and to record a conviction for an offence (including an electable offence or an offence only triable in the High Court).

(2) Notwithstanding subsection (1), a person who has been charged with an offence only triable by the High Court or who has elected trial by the High Court in respect of an electable offence may reserve his plea until arraignment by the High Court.

Transfer to the High Court following plea

226. If an accused person has pleaded guilty and been convicted or pleaded not guilty to an electable offence in respect of which the accused has elected trial in the High Court or with an offence triable only in the High Court the magistrate shall, forthwith, order the transfer of the charges or proceedings to the High Court for sentencing or for trial.

Particulars of order for transfer

227. If a magistrate makes an order for transfer of a charge or proceedings to the High Court—

- (a) a copy of the order for transfer shall, forthwith, be sent by the officer-in-charge of a magistrate's court to the Chief Registrar of the High Court and the Director of Public Prosecutions;
- (b) the accused person shall be remanded, either on bail or in custody, to appear in the High Court on a fixed date not exceeding 28 days from the date of the order for transfer;
- (c) in the case of an order for transfer made following a plea of guilty under section 226, a copy of the order of transfer and of the charge in respect of which a conviction has been entered by the magistrate shall be sent to the Chief Registrar of the High Court.

First appearance of accused person at High Court

228.—(1) Subject to section 233, an accused person whose charge or proceedings has been transferred to the High Court under section 226 shall be brought before the High Court not later than 28 days from the date the order of transfer was made.

(2) Upon first appearance before the High Court of an accused person who has pleaded guilty in the Magistrates' Court and has been convicted under section 226, the High Court shall proceed to sentence.

(3) Upon first appearance before the High Court of an accused person who has pleaded not guilty under section 226 or has reserved his plea under section 225, the High Court shall proceed to arraignment.

Rules as to alibi

229.—(1) On a trial before the High Court the accused person shall not, without the leave of the Court, adduce evidence in support of an alibi unless the offender, within 21 days of an order for transfer to the High Court, gives notice of particulars of the alibi.

(2) Without prejudice to subsection (1), on any such trial the accused person shall not, without the leave of the Court, call any other person to give evidence in support of an alibi unless—

- (a) the notice under subsection (1) includes the name and address of the witness, or, if the name or address is not known to the accused person at the time of giving notice, any information in the possession of the accused person which might be of material assistance in finding the witness;
- (b) if the name or the address is not included in the notice, the Court is satisfied that the offender, before giving the notice, took and thereafter continued to take all reasonable steps to secure that the name or address would be ascertained;
- (c) if the name or the address is not included in that notice and the accused person subsequently discovers the name or address or receives other information which might be of material assistance in finding the witness, the accused person forthwith gives notice of the name, address or other information, as the case may be; and
- (d) if the accused person is notified by or on behalf of the prosecutor that the witness has not been traced by the name or at the address given, the accused person forthwith gives notice of any information which is then in the possession of the accused person or, on subsequently receiving any such information, forthwith gives notice of it.

(3) Any evidence tendered to disprove an alibi may subject to any directions by the Court as to the time it is to be given, be given before or after evidence is given in support of the alibi.

(4) Any notice purporting to be given under this section on behalf of the accused person or by the legal practitioner of the accused person shall, unless the contrary is proved, be deemed to be given with the authority of the offender.

(5) A notice under subsection (1) shall be given in court prior to an order for transfer to the High Court or in writing to the prosecution and a notice under paragraph (c) or (d) of subsection (2) shall be given in writing to the prosecution.

(6) A magistrate making an order for transfer to the High Court whether for trial or for sentence shall inform the accused person of the provisions of subsection (1).

(7) The High Court shall not refuse leave under this section if it appears to the Court that the accused person was not informed of the requirements of this section.

Taking statement from persons dangerously ill

230. Whenever it appears to a magistrate that a person dangerously ill or hurt and not likely to recover is able and willing to give material evidence relating to any offence to be tried in the High Court, the magistrate—

- (a) may, in writing, take the statement on oath of the person;
- (b) shall subscribe the same and certify that it contains accurately the whole of the statement made by the person;
- (c) shall state the reasons for taking the evidence, and
- (d) shall state the date and place where the evidence was taken.

Notice to be given

231. If the statement relates or is expected to relate to an offence for which a person has been charged, reasonable notice of the intention to take the statement shall be served on the prosecutor and the accused person, and if the accused person is in custody, the magistrate must, in writing, order the accused person to be brought by the person-in-charge of the custody of the accused person to the place where the statement is to be taken.

Transmission of statements

232.—(1) If the statement relates to an offence for which any person is then or subsequently transferred for trial or sentence, the magistrate who took the statement shall transmit the statement to the Chief Registrar of the High Court and the Director of Public Prosecutions.

(2) Such statement so taken may afterwards be used in evidence on the trial of the person accused of an offence to which the statement relates, if—

- (a) the person who made the statement later dies, or
- (b) the court is satisfied that for any sufficient cause the attendance of the person cannot be procured; and
- (c) reasonable notice of the intention to take the statement was served upon the person (whether prosecutor or accused person) against whom it is proposed to be read in evidence, and
- (d) the person had chosen to be present, the person had or might have had full opportunity of cross-examining the person making the statement.

Filing of an information

233.—(1) An information charging an accused person and drawn up in accordance with section 235 shall be filed by the Director of Public Prosecutions with the Chief Registrar of the High Court within 21 days of the order for transfer except that the High Court may grant leave to extend the 21 days.

(2) In the information, the Director of Public Prosecutions may charge the accused person with any offence, either in addition to or in substitution for the offence in respect of which the accused person has been transferred to the High Court for trial.

Service of information

234. A copy of the information filed under section 233 shall be served on the accused person or his legal representatives as soon as possible but at least upon the accused's first appearance except with the leave of the High Court to extend the period of service.

Form of information

235.—(1) Any information filed under section 233 shall be in the name of and (subject to section 72) signed by the Director of Public Prosecutions.

(2) Every information shall bear the date of the day when the same is signed and with such modifications as shall be necessary to adapt in to the circumstances of each case may commence in the following form—

THE STATE v. A.B.

IN THE HIGH COURT OF FIJI
AT SUVA

INFORMATION BY THE DIRECTOR OF PUBLIC
PROSECUTIONS

A.B is charged with the following offence (s)

Reports of order of transfer

236.—(1) No person shall publish a written report or to broadcast in the Fiji Islands a report of any proceedings preparatory to an order for transfer to the High Court containing any matter other than that permitted by subsection (3).

(2) Notwithstanding subsection (1), a person may publish or broadcast a report of transfer proceedings containing any matter other than that permitted by subsection (3) after the conclusion of the trial in respect of which the transfer was ordered.

(3) The following matters may be contained in a report of transfer proceedings—

(a) the identity of the court and the name of the magistrate;

Criminal Procedure Code (Amendment) — 13 of 2003

- (b) the name, age and occupation of the accused person;
- (c) summary of the offence with which the accused person has been charged;
- (d) a summary of the offence in respect of which an order for transfer to the High Court was made;
- (e) the name of the legal practitioner representing the accused person;
- (f) whether the accused person, whose charges or proceedings has been ordered for transfer, was remanded in custody or on bail.

(4) If a report is published or broadcast in contravention of subsection (1), the following persons, that is to say—

- (a) in the case of a publication of a written report as part of a newspaper or periodical, any proprietor, editor or publisher of the newspaper or periodical;
- (b) in the case of publication of a written report otherwise than as part of a newspaper or periodical but including publication on the internet the original publisher;
- (c) in the case of a broadcast of a report by radio or television any body corporate which transmits or provides the programmes in which the report is broadcast and any person having functions in relation to the programme corresponding to those of the editor of a newspaper or periodical;

commits an offence and is liable on conviction to a fine not exceeding \$10,000.

(5) Proceedings for an offence under this section shall not be instituted except with the consent of the Director of Public Prosecutions.”.

Part VIII repealed

10. Part VIII of the Code is repealed.

Section 266 amended

11. Section 266 of the Code is amended:

- (a) by deleting “members of Her Majesty’s military or air forces” and substituting the words “members of the Republic of the Fiji Military Forces”;
- (b) by deleting “Royal”.

Section 274 amended

12. Section 274 of the Code is amended by adding after subsection (7) the following subsections—

“(9) The Court may, upon application by the prosecution, grant leave to amend an information, whether by way of substitution or addition of charges or otherwise.

(10) In deciding whether or not to grant leave, the Court may consider whether such amendment might embarrass the accused in his defence and whether such embarrassment might be appropriately mitigated by way of adjournment of trial.”.

“Barrister and Solicitor” replaced

13. The Code is amended by deleting “barrister and solicitor” wherever it occurs in the Code and substituting “legal practitioner”.

References to preliminary enquiries deleted

14. The Code is amended by deleting the following words; “enquiry”, “or enquiry”, “enquiry or”, “enquire into or”, “enquiring into or”, “enquired into”, “enquired into or”, “other than a preliminary enquiry”, “preliminary investigation or”, “enquiries and”, appearing in sections 3(1), 3(2), 61, 62, 63, 65, 66, 69, 70(1), 74, 75, 79, 135, 138, 143, 148(1), 151, 189, 190, 191, 192, 196 and in the title to Part V of the Code.

Transitional

15.—This Act does not apply to charges for electable offences pending in the magistrate's courts before the commencement of this Act except where the accused person consented to his or her case being transferred to the High Court under the new section 226.

Passed by the House of Representatives this 13th day of August 2003.

Passed by the Senate this 11th day of September 2003.