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## Foreword

***“The roles of the prosecutor and the investigator are interdependent. Whilst each has separate responsibilities in the criminal justice system, they need to work in partnership to enforce the law. The prosecutor cannot direct investigations, but he or she may request further investigation to pursue additional line of enquiries which are relevant to the decision-making process.”***

– Paragraph 5.2 of the Guide for Prosecutors in Antigua and Barbuda.

Two of the underlying critical points contained in the afore extract are the collaborative effort between investigators and prosecutors in order to enhance the criminal justice system; and the need to be thorough and informed so that intelligent and reasoned decisions can be made.

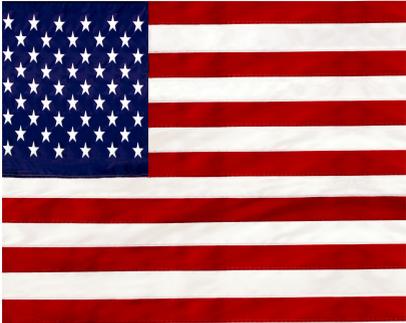
As part of this partnership between investigators and prosecutors, as well as to ensure there is a ready “go-to” reference dealing with everyday issues, the Office of the Director of Public Prosecutions / National Prosecution Service is pleased to present this “Points to Prove” (P2P) booklet.

The P2P is a “tailor-made” publication for persons involved in law enforcement and concerned about the rule of law (in particular the criminal justice system) in Antigua and Barbuda. It provides guidance and references to core principles, covering issues such as police powers of arrest and detention, the judges’ rules, essential elements with respect to some of the most common offences as well as the “newer” offences like human trafficking and money laundering.

P2P is not a text book, but intended to be a working document which practitioners (investigators and prosecutors) would keep close at hand and to which they would readily refer whether for guidance or to refresh their memory.

This publication represents an important step forward in the contribution of the Office of the Director of Public Prosecutions / National Prosecution Service in positively enhancing the criminal justice system in this multi-island State.

Special mention must also be made of the United States Embassy to the Eastern Caribbean based in Bridgetown, Barbados, the United Kingdom Foreign and Commonwealth Office through its High Commission in Bridgetown, Barbados as well as the Government Printery of Antigua and Barbuda who ably assisted in the publication of this edition of the P2P.



EMBASSY of the UNITED STATES of AMERICA to BARBADOS,  
the EASTERN CARIBBEAN, and the OECS



British  
High Commission  
Bridgetown

## Useful References

### Statute

**Antigua and Barbuda Constitution Order**, CAP 23 of the Laws of Antigua and Barbuda

**Criminal Procedure Act**, CAP 117 of the Laws of Antigua and Barbuda

**Evidence Act**, CAP 155 of the Laws of Antigua and Barbuda

**Evidence (Special Provisions) Act 2009**

**Firearms Act**, CAP 171 of the Laws of Antigua and Barbuda

**[Interviewing of Suspects for Serious Crimes Act**, Act Number ? of 2013]

**Larceny Act** CAP 241 of the Laws of Antigua and Barbuda

**Malicious Damage Act** CAP 258 of the Laws of Antigua and Barbuda

**Misuse of Drugs Act**, CAP 283 of the Laws of Antigua and Barbuda

**Money Laundering Prevention Act** No.9 of 1996

**Offences Against the Person Act**, CAP 300 of the Laws of Antigua and Barbuda

**Police Act**, CAP 330 of the Laws of Antigua and Barbuda

**Proceeds of Crime Act** No.13 of 1993

**Sexual Offences Act** No.9 of 1995

### Resource Materials

**Guide to Investigation and Prosecution of Serious Organised Crime** – Dan Suter and Nicola Suter

**Guide for Prosecutors 2013** – Office of the Director of Public Prosecutions

# Police Powers

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Although the rules that govern Police Officers in the State of Antigua and Barbuda, stipulating their powers, and practises to be observed are found in various sections of the Laws of Antigua and Barbuda, some of the most fundamental sections are found in the **Police Act**, CAP 330 and its Regulations; the **Criminal Procedure Act**, CAP 117; and the Judge's Rules and Directions.

## Arrest

In making an arrest, Police Officers ought to:

### **Confine the Suspect**

- The person making the arrest shall actually touch or confine the body of the person to be arrested unless that person submits by word or action.

### **Use Only Reasonable Force**

- If the person forcibly resists however, the person making the arrest may use all means necessary to effect the arrest, without exceeding the amount of force that is reasonable in the particular circumstances to apprehend the person to be arrested.

### **Use Only Necessary Restraint**

- The person who is arrested should not be subjected to more restraint than is necessary to prevent his escape.

### **Consider if the Offence is Arrestable**

- A person can be arrested without warrant for a summary or indictable offence pursuant to Section 3 of the **Criminal Procedure Act**. Also note the power to arrest without warrant under Section 22 of the **Police Act**

## Stop, Search, Detain

A Police Officer may stop, search and detain:

- Any vessel, vehicle, or aircraft in which he suspects he would find anything:
  - Stolen or unlawfully obtained; or
  - In respect of which the commission of an offence relates.

- Any person who he reasonably suspects of having in his possession, or conveying in any manner, anything stolen or unlawfully obtained or in respect of which an offence is being, or has been, committed.

## **Search**

When a person is arrested, the Police Officer who arrested him may search him. All articles found on the arrested person, except the clothes he needs to wear, shall be placed in safe custody.

Whenever a woman is to be searched, the search must be conducted by another woman with strict regard to decency. Failure to do so would make the Officer who authorised the search and the one who conducted the search guilty of an offence and liable to imprisonment for six (6) months.

## **Detention**

When a suspect is taken into custody without a warrant for an offence (other than an offence which is punishable by death), upon arrival at the station, the Police Officer in charge shall inquire into the case immediately.

- If when the Officer In Charge has completed his inquiry, he finds that:
  - There is insufficient evidence to believe that the suspect has committed any offence, the suspect shall be released forthwith.
  - There is reason to believe the suspect has committed an offence but the offence does not appear to be of a serious nature; he may, and shall, if it does not appear practicable to bring such person before a court within forty-eight (48) hours after he was taken into custody, release the person; having executed a bond, with or without sureties, on him to appear before a Magistrate's Court at a time and place named in the bond.
  - The case cannot be completed forthwith; he may release the Accused on a bond, with or without sureties, to appear at a named Police station at a particular time unless he receives prior written notice from the Officer in Charge that his attendance is not required.
- When a suspect has been arrested, and is retained in custody:
  - He must be charged or informed that a charge will be brought against him within the first forty-eight (48) hours of his arrest or detention.

- He must be brought before a Magistrate's Court at the earliest time practicable, and in any event no later than forty-eight (48) hours after he was first arrested or detained, whether the Police inquiries are completed or not.
- He is entitled to have an indication of his arrest and place where he is being held communicated to one (1) person reasonably named by him without delay. Except where delay is necessary in the interest of the investigation or prevention of crime or the apprehension of offenders, in which case, relaying the information of the suspect's detainment to the named person shall not be delayed more than is necessary.

## Judges' Rules

It is essential that Police Officers follow the procedures set out in the Judges' Rules, not only because the evidence obtained in breach thereof is liable to be excluded at the trial judge's discretion in subsequent proceedings, but because a disciplinary offence can arise therefrom.

### ***RULE 1 [Inquiries]***

*Rule 1 is generally initiated on information received or on suspicion and covers the gathering of information where a person might be in custody although no charge has been laid.*

A Police Officer is entitled to question any person, whether suspected or not, from whom he thinks useful information may be obtained when he is trying to discover whether, or by whom, an offence has been committed.

### ***RULE 2 [Initial Pre-Charge Caution]***

As soon as a Police Officer has evidence which affords reasonable grounds for suspecting an individual has committed an offence, he shall caution that person or cause him to be cautioned before putting any question or further questions to him relating to that offence. The Police Officer ought to keep a record of the time and place at which the caution was given and any such questioning or statement began and ended and of the persons present.

CAUTION:

*“You are not obliged to say anything unless you wish to do so but what you say may be put into writing and given in evidence.”*

Evidence referred to in *Rule 2* may be oral, documentary or real and need not prove conclusively that the suspect had committed the offence, but merely satisfy the investigator that there are reasonable grounds for suspecting that he has committed the offence.

### **RULE 3 [Subsequent / Post Charge Caution]**

A person who has been charged with or informed that he may be prosecuted for an offence shall be cautioned:

*“Do you wish to say anything? You are not obliged to say anything unless you wish to do so, but whatever you say will be taken down in writing and may be given in evidence.”*

Questions relating to an offence should only be put to the Accused after he has been charged or informed that he may be prosecuted in exceptional circumstances; such as where they are necessary to prevent or minimise harm or loss to some other person, or to the public; or for clearing up an ambiguity (such as time of the offence) in a previous answer or statement.

If it is necessary to ask a person questions after he has been formally charged, then the person must be further cautioned as follows, the conversation needs to be contemporaneously recorded and then the Accused asked to sign the record. If he refuses to sign, the Senior Police Officer present will sign it.

Before any such questions are put, the Accused should be cautioned:

*“I wish to put some question to you about the offence with which you have been charged (or about the offence for which you may be prosecuted). You are not obliged to answer any of these questions, but if you do the questions and answers will be taken down in writing and may be given in evidence.”*

The Police Officer shall keep a record of the time and place at which caution occurred, any questioning or statement began and ended, and of the persons present.

### **RULE 4 [Procedural Steps in Taking a Statement from an Accused]**

If a suspect wants to make a statement, he shall be told that a written record of what he says will be made.

He shall always be asked whether he wishes to write down for himself what he wants to say. If he says that he cannot write or that he would like someone to write it for him, a Police Officer may offer to write the statement for him.

### Police Officer Writing Statement on the Suspect's Behalf

If the suspect accepts the offer for the Police Officer to write down the statement as he dictates, before the Police Officer starts to write the statement, the Officer should write...

*"I .../[INSERT SUSPECT'S NAME]... wish to make a statement I want someone to write down what I say. I have been told that I need not say anything unless I wish to do so and that whatever I say may be given in evidence."*

...and ask the Accused to sign or make his mark as close as possible to it.

#### NOTE:

Whenever a Police Officer is writing a statement for a suspect, the exact words of the suspect should be recorded. The Police Officer should not put any questions to the suspect at this point other than that which may be needed to make the statement coherent, intelligible and relevant to the material matters. If the Officer has to ask the suspect any questions (as in *Rule 2* above) those ought to be recorded separately and not as part of this statement, as those questions and answers would not be construed as "the prisoner's own words".

The suspect should be given the statement and told that he can correct, alter, or add anything he wishes; he should be given the option to read it for himself or it shall be read to him by the Police Officer who recorded it. If any changes are made to the statement, the witness and Officer should initial them.

Thereafter, the suspect should be asked to write and certify by signing or putting his mark, as close as possible after the following:

*"I have read the above statement and I have been told that I can correct, alter or add anything I wish. This statement is true. I have made it of my own free will."*

If the suspect cannot write, it should be written for him. If the suspect refuses to certify the statement, the Senior Police Officer shall record on the statement itself in the presence of the suspect what has happened.

The Police Officer shall then certify on the statement itself what he has done.

### Suspect Writing His Own Statement

If the suspect is going to write the statement for himself, he shall be asked to write out...

*“I make this statement of my own free will. I have been told that I need not say anything unless I wish to do so and that whatever I say may be given in evidence.”*

...and sign near it before writing the body of his statement. Once he is finished, he should be given the opportunity to re-read the statement and told that he can correct, alter, or add anything he wishes.

The suspect should be asked to end his statement by writing the following certificate followed by his signature:

*“I have read the above statement and I have been told that I can correct, alter or add anything I wish. This statement is true. I have made it of my own free will.”*

The Police Officer present shall then certify on the statement itself what has taken place, by writing what has transpired and then signing same.

### **RULE 5 [Statement of Co-Accused]**

If at any time after a person has been charged with, or has been informed that he may be prosecuted for, an offence a Police Officer wishes to bring to his attention a written statement made by another person charged in relation to the same offence; the Police Officer shall hand a true copy of the written statement to the suspect, but the Police Officer shall neither say nor do anything to invite a reply or comment. If the suspect says he would like to make a statement in reply or starts to say something, he shall be cautioned immediately as follows:

*“Do you wish to say anything? You are not obliged to say anything unless you wish to do so, but whatever you say will be taken down in writing and may be given in evidence.”*

### ***RULE 6 [Scope of Applicability]***

These rules apply and as far as practicable should be followed by all persons (including non-Police Officers) charged with the duty of investigating offences or charging offenders.

## Directions under Judges' Rules

### • **Interrogation and Statements**

- When possible, statements of persons under caution should be written on forms provided for this purpose. Police Officers' notebooks should be used for taking statements only when forms are not available.
- When a person is being questioned or elects to make a statement, a record should be kept of the time or times during the questioning or making of the statement, where intervals or refreshment breaks occur. The nature of the refreshment should be noted. In no circumstances should alcoholic drink be given.
- In writing down a statement, the words used should not be translated into "official" vocabulary; this may give a misleading impression of the genuineness of the statement.
- Care should be taken to avoid any suggestion that the person's answers can only be used in evidence against him, as this may prevent an innocent person making a statement which might help to clear him of the charge.

On request, a copy of the Accused's statement under caution may be supplied to him or his legal representative. An Officer must not refuse to hand over a copy of the Accused's caution statement even if he is of the opinion that it should not be handed over to the defence; instead the Officer should seek the authority of the Director of Public Prosecutions (DPP) before doing so.

Oral statements made by the Accused should not be supplied to him or his lawyer without the DPP's authority.

### • **Record of Interrogation**

A record should be kept of the time and place all statements and any interrogation begun and ended, and of all persons present.

Although it is not necessary, it is advisable for at least two (2) Police Officers to be present during interrogation; once two (2) or more Police

Officers are present when the questions are being put to the suspect or the suspect makes a statement, the records made should be countersigned by the other Officers.

A full record should be kept of the:

- Time or times at which cautions were taken;
- Refreshment breaks during interrogation;
- What was served for refreshment; and
- Time when a charge was made and / or the person arrested.

Did the suspect request Counsel or make contact with Counsel?

If the Police assisted in contacting Counsel, and / or a relative of the person in custody, a record of who was contacted, the time and the response ought to be made.

Police Officers should record times of ACCURIST:

- A** – Arrest
- C** – Charge
- C** – Caution(s)
- (q)U** – Questions and Answers (beginning and end)
- R** – Refreshments
- I** – Intervals
- S** – Statements (beginning and end)
- T** – Two or more Officers (if present, should countersign statements and / or pocket notebook.)

### • **Comfort and Refreshment**

Reasonable arrangements should be made for the comfort and refreshment of persons being questioned. Whenever practicable, both the person being questioned or making a statement and the Officers asking the questions or taking the statement should be seated. A person being questioned ought to be given an opportunity to relax and be refreshed in between interviews.

- **Interrogation of Children, Young Persons and Mentally Handicapped Persons**

As far as is practicable, children and young persons under the age of sixteen (16) years (whether suspected of a crime or not), should only be interviewed in the presence of a parent or guardian; or, in their absence, some person who is not a Police Officer and is of the same sex as the child.

A child or young person should not be arrested nor interviewed at school once it can possibly be avoided. Where it is found essential to conduct the interview at school this should be done only with the consent, and in the presence, of the Head Teacher, or his nominee.

### **Mentally Handicapped Persons**

If it appears to a Police Officer that a person (whether he is a witness or suspect) he intends to interview has a mental handicap which raises doubt as to whether the person can understand the questions put to him, or which makes the person likely to be especially open to suggestion, the Officer should take particular care in putting questions to him and accepting the reliability of his answers.

As far as is practicable, and where recognised as such by the Police, a mentally handicapped adult (whether suspected of crime or not) should be interviewed only in the presence of a parent or other person in whose care, custody or control he is, or of some person who is not a Police Officer (for example a social worker).

Any document arising from an interview with a mentally handicapped person of any age should be signed not only by the person who made the statement, but also by the parent or other person who was present during the interview.

Since the reliability of any admission by a mentally handicapped person may even then be challenged, care will still be necessary to verify the facts admitted otherwise and to obtain corroboration where possible.

- **Interrogation of Foreigners**

Where the person to give a statement is using a language other than English, the Police Officer investigating the matter should have an interpreter record the statement.

- a) The interpreter should write the statement in the language in which it is made;
- b) The person making the statement should sign the foreign language statement; once it has been recorded, re-read and he is given a chance to correct, alter or add anything he wishes to it.
- c) An official English translation should be made of the statement subsequently and attached to the original as an exhibit.
- d) In order for these statements (the foreign language and English translation), especially when made under caution, to be produced as evidence, the Police Officer needs to take a statement from the interpreter who recorded and subsequently translated the statement.
- e) The witness should not be asked to sign the English version of the statement because apart from the question of apparent unfairness, to obtain the signature of a suspect to an English translation of what he said in another language can have little or no value as evidence if the suspect disputes the accuracy of this record of his statement.

The Senior Police Officer present when a foreigner is arrested ought to take steps to inform or notify the relevant High Commission or Embassy of the presence of their national in the State of Antigua and Barbuda.

- **Written Statement of Charges to be supplied to the Accused**

Whenever a charge is preferred against a person who was arrested without a warrant for an offence, the Accused should be given written notice of the particulars of the offence with which he is charged.

The written particulars of the charge, so far as is possible, should:

- Follow the caution:  
*“You are charged with the offence (s) shown below you are not obliged to say anything unless you wish to do so, but whatever you say will be taken down in writing and maybe given in evidence.”*
- Be stated in simple language so that the Accused may understand it,

- Show clearly the precise offence in law with which he is charged, that is, the section of the statute which created the offence should be quoted.
- Be signed and dated by the Police Officer who is charging the Accused.

### **Further Charges**

Once the Accused has appeared before the Court it is not necessary to serve him with a written notice of any further charges which may be preferred.

If, however, the Police decide, before he has appeared before a Court, to modify the charge or to prefer further charges, it is desirable that the person concerned be formally charged with the further offence(s) and given a written copy of the charge(s) as soon as possible, having regard to the particular circumstances of the case.

If the Accused has been released on bail, it may not always be practicable or reasonable to prefer the new charge at once. In cases where he is due to surrender to his bail within forty-eight (48) hours or in some cases of difficulty, it will be sufficient for him to be formally charged with the further offence and served with a written notice of the charge after he has surrendered to his bail and before he appears before the Court.

### **• Facilities Available to the Accused whilst in Police Custody**

Persons in custody should be informed orally of the rights and facilities available to them. These rights and facilities should also be described in notices displayed at convenient and conspicuous locations at Police Stations. The attention of persons in custody should be drawn to these notices.

Provided that no hindrance is reasonably likely to be caused to the processes of investigation or the administration of justice, a person in custody should:

- Be supplied with writing materials on request.
- Be allowed to speak on the telephone to his Attorney or to his friends.
- Have his letters sent by post or otherwise with the least possible delay.

## Electronic Recording of Interviews

**Interviewing of Accuseds for Serious Crimes Bill** when passed mandates that electronic interviews must be conducted in cases of serious crimes such as:

- 1) Money laundering
- 2) Drug trafficking offences
- 3) Firearm offences
- 4) Fraud
- 5) Murder
- 6) Manslaughter
- 7) Armed robbery
- 8) Kidnapping
- 9) Human trafficking
- 10) Corruption
- 11) Rape
- 12) Any conspiracy relating to any of the above listed offences.

Note: There is a presumption of inadmissibility that attaches to written statement recorded from suspects in respect of the list of serious crimes outlined above. The presumption can be rebutted: See Section eight (8) of the Act.

The caution to be used before the start of all electronic interviews is:

*“You do not have to say anything, but it may harm your defence if you do not mention when questioned something which you may later rely on in court. Anything you do say may be given in evidence.”*

The general procedure for an electronically recorded custodial interview is as follows:

- The interview takes place in a designated interview room in the presence of the interviewing and witnessing Officer.

- The suspect is shown the equipment and all present should sign the new recording media (DVD).
- The interviewing Officer should formally explain the process: explain how the interview will be done, introduce himself and identify all persons present, state the date and time and explain what will happen to the actual recording. A crib sheet will be available in the interview confirming the procedure and all standard operating procedures should be followed.
- The suspect is informed of his right to Legal Counsel.
- A suspect charged with a serious crime shall be cautioned as follows:

*“You do not have to say anything, but it may harm your defence if you do not mention now something which you later rely on in court. Anything you do say may be given in evidence.”*

- The interview begins. (It is best if the Interviewer prepares a list of questions to pose to the suspect even whilst allowing the suspect to give his story.)
- Any previous written statement should be put to the suspect as well as other material evidence that will be used against him.
- Any breaks in the interviews must be recorded; stating the reason why and the time that the break was taken, how long it lasted and the time when the interview resumes.
- At the end of the custodial interview, the suspect is offered the chance to clarify issues and make alterations.
- If a written statement was previously recorded, this statement must be read back for the record.
- The time of the conclusion of the custodial interview must be recorded before the recording equipment is switched off.
- Four (4) copies of the recording are to be prepared (4 DVDs):
  - 1 copy to the DPP – this version should be capable of being edited if issue may arise later about the admissibility of certain parts of the interview)

- 1 copy for suspect/ his Counsel
- 1 copy for Investigator/Office
- 1 sealed copy of the master recording to be kept as Exhibit (the suspect ought to have written on this DVD, as well as the Interviewing Officer(s))

## Charging of Suspects

Every decision to charge a suspect with an offence, apart from taking the requisite points to prove for that offence, the two (2) stage test of the Guide for Prosecutors should be applied sequentially:

- The Evidential Stage,
- The Public Interest Stage.

### **The Evidential Stage**

The Guide for Prosecutors, at paragraph 7.5, confirms that:

*“Prosecutors must be satisfied that a reasonable prospect of conviction exists if, in relation to an identifiable suspect, there is credible evidence which the prosecution can adduce before a court and upon which evidence could reasonably be expected to be satisfied beyond reasonable doubt that the suspect who is prosecuted has committed a criminal offence.”*

### **The Public Interest Stage**

The Guide for Prosecutors, at paragraph 7.10, confirms that:

*“A prosecution will usually take place unless the prosecutor is sure that there are public interest factors tending against prosecution which outweigh those tending in favour. The more serious the offence or the offender’s record of criminal behaviour the more likely it is that a prosecution will be required in the public interest.”*

Any Police Officer deciding whether to charge an Accused must apply this two (2) stage test, after fully considering the evidence and surrounding circumstances.

If a Police Officer is unsure, after applying the two (2) stage test of the Guide, whether to charge, the Office of the Director of Public Prosecutions should be contacted for advice before the expiry of the custody time limit.

Also, it is good practice to contact the Office of the Director of Public Prosecutions for advice when charging all indictable matters.

## Asset Recovery

When investigating any offence consider if the Accused has benefited, that is, has the suspect received cash, property or a pecuniary advantage from the crime.

Where it is found that the Accused has benefitted, the Police Officer should contact the Police Proceeds of Crime Unit with the information and suggest that an investigation be conducted. Once complete, the Proceeds of Crime Unit will consider ancillary orders such as restraint of assets to prevent dissipation and take the requisite steps needed with regard to confiscation proceedings. This P2P, for appropriate offences, will refer to whether: **YOU HAVE CONSIDERED RESTRAINT AND CONFISCATION**

## Cash Seizure

**If a Police Office comes into contact with cash believed to be the result of a crime or intended for use in crime for any amount, anywhere they must:**

- Inform a supervisor and ask a colleague to witness their actions;
- Telephone the Police Proceeds of Crime Unit (POCU) or ONDCP. Describe what they have found (half a carrier bag of Euro etc);
- **Think forensics** do not unwrap or count the cash - Wear gloves and try to touch as little as possible;
- Take the person and the cash to an interview room, ask them tactical questions and write down the Q & A's.

The POCU or ONDCP will attend the scene. They will have a cash seizure kit and a camera. They will count the cash with the Officer and the owner. The Police Officer will brief them on the circumstances and they will decide if they are going to arrest the individual for Money Laundering. The POCU

or ONDCP will take over the investigation so the Police Officer can continue with their duties.

- The Police Officer will then be required to make a statement/affidavit

## Witness Anonymity

Witness anonymity may be required to protect a witness from serious harm. If an officer believes a witness needs to have anonymity they should contact the Office of the DPP immediately to discuss the steps to be taken. The following documentation will be required from the officer if an application is being considered for witness anonymity pursuant to the Evidence (Special Provisions) Act 2005:

- a) Either:
  - A full evidential statement from the witness giving their true identity; **or**
  - Where that person is a police officer or a member of any other agency responsible for the investigation of criminal offences, a report from a senior officer setting out why it is appropriate for the Prosecutor to apply to the court to exercise its discretion not to be informed of the identity of the witness;
- b) A redacted version of the witness' full evidential statement with all elements that could identify the witness removed;
- c) A statement from the witness setting out their fear about giving evidence if their identity is made known to the accused, and, where appropriate, whether the witness will not give evidence without anonymity;
- d) For police witnesses only, confirmation that witness

anonymity is required 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);

- e) A report which includes:
- A full risk assessment undertaken by the Investigator, which should include an assessment of the reasonableness of the witness' fear and explaining why any other protection measures such as special measures are not adequate;
  - An indication whether any special arrangements have been made with the witness (for example, a house move).

For more information see Chapter Five of the **Guide**

## Video Link

The prosecution may apply for a witness out of State to give evidence via the Court video-link. If there is an eligible witness the Office of the DPP should be contacted to discuss the best way forward.

## Case Preparation

The Police and the Office of the DPP share a common goal, the successful prosecution of persons who have committed offences in circumstances where the public interest requires a prosecution. Consistent preparation of a case file should ensure that the evidence is gathered in time and to the right and proportionate standard. To avoid any subsequent re-working the police should provide as much information as possible to the Office of the Director of Public Prosecutions in a submitted file in accordance with any current guidance.

### Facts

The “facts” of a case usually appear on the second sheet of the file, following the information. The “facts” is intended to be a summary of the main ingredients of the crime specifying how the event unfolded. Officers should portray a global view of what happened, taking into account the statements given by witnesses and / or the Accused and not only by the Complainant’s recollection.

### Charge Sheets

Two (2) charge sheets are to be prepared at all times. The charge sheets are to be duly completed (including being signed and dated) by the Police Officer who officially charged the Accused.

### Antecedents

The criminal record of each Accused is very important to each case, especially as regards sentencing. Consequently, it is vital for each Police Officer bringing a new arrest to court to bring along with the Accused, his

antecedents. Upon the completion of each case, the requisite record form of each Accused should be filled out and returned to the Criminal Records Office, so that that Accused's antecedents can be updated and kept current.

The file may also include the following:

- a) All relevant victim statements;
- b) All relevant witness statements;
- c) Details of all case exhibits (including photographic evidence);
- d) Accused interviews and/or statements;
- e) Any photographic, video or CCTV evidence;
- f) Relevant police records, for example, crime reports and intelligence;
- g) If a violent offence details of the victim's injuries (medical, photographic and written);
- h) Description of any relevant scene with any photographic evidence;
- i) Statements including those from the first officer at the scene;
- j) Details of other potential evidence or evidence currently being processed and therefore not available as part of the file, and when this will become available;
- k) Any information that supports the accused's case or undermines the case for the prosecution.
- l) Remand status and reasons;

Where necessary, there should be early consultation with the Office of the Director of Public Prosecutions who may provide guidance and advice throughout the investigative and prosecuting process and this may include lines of inquiry, evidential requirements and assistance in any pre-charge procedures such as ID parades. The Office of the Director of Public Prosecutions will be pro-active in identifying, and where possible, rectifying evidential deficiencies and bringing to an early conclusion those cases that cannot be strengthened by further investigation.

Police Officers during their investigations ought to be mindful to get a global view of the circumstances surrounding an alleged offence instead of simply taking the Complainant's version of events and present them as the entire story. The Complainant should be asked about persons who were present at the time of the alleged incident, and those persons sought to obtain statements when preparing the case file.

In the event that persons are unable or unwilling to give statements in support of either the Complainant's or Accused's case, the Police Officers ought to make a note of every person spoken to and his / her account of the events – even where those persons are unwilling to put what they said in writing. This note should be included in the Officer's diary of work done on that particular file to be submitted to the Prosecutor.

## Common Assault

- Section 43 CAP 300, Laws of Antigua and Barbuda
- Summary offence
- Maximum sentence:
  - o Two (2) months imprisonment or fine not exceeding one thousand dollars
  - o Where an assault upon a male child under 14 or on a female six (6) months imprisonment or a fine not exceeding five thousand dollars

### Elements:

- o Accused intentionally or recklessly causes another person to apprehend immediate unlawful violence (assault).
- o Accused intentionally or recklessly applies unlawful force to the Complainant (battery).

### Note:

It is the actual causing the Complainant to fear regardless of whether violence was used or not that constitutes the assault.

Assault can be committed by words alone.

Most offences of violence in a domestic context whose injuries are relatively minor are charged either as common assault or assault causing actual bodily harm.

The least touching of a person can amount to battery.

A drunken intent is still intent.

## Defences

Possible defences to look out for and hence question witnesses to negate:

- Consent
- Self-defence and defence of other

## Assault causing Actual Bodily Harm

- Section 48 CAP 300, Laws of Antigua and Barbuda
- Triable either summarily or on indictment. (Generally only proceeded as a Summary Offence)
- Maximum sentence: Five (5) years imprisonment

### Elements:

- There must be an assault or battery which caused the Accused bodily harm of some sort.
- The harm caused may be a direct or indirect consequence of the assault or battery.
- Evidence of external bodily injury, (for example, a break in the surface of, or bruise to, the Complainant's skin) is not necessary.

Exhibits: (1) Medical injury form (it is best to let the Complainant sign or initial the back of the injury form, as a means of identifying it if the matter goes to trial).

(2) Object(s) the Accused used, if any, to inflict injuries.

### Note:

The harm caused must be something the Accused could have reasonably foresaw as a consequence of what he was doing or saying to the Complainant.

The injury does not have to be permanent, but it must be more than merely transient or trifling. A medical form must be submitted showing the injuries sustained.

### Example:

Medical Injury Form which specifies "swelling or tenderness" at the site of impact will be sufficient.

## Defences

Possible defences to look out for and hence question witnesses to negate:

- Consent
- Self-defence and defence of other

## Wounding or Inflicting Grievous Bodily Harm

- Section 22 CAP 300, Laws of Antigua and Barbuda
- Triable either summarily or on indictment
- Maximum sentence: Five (5) years imprisonment

Elements:

- Accused unlawfully and maliciously wounds Complainant, or
- Accused unlawfully and maliciously inflicts really serious harm on the Complainant.

- Exhibits: (1) Medical injury form (it is best to let the Complainant sign or initial the back of the injury form, as a means of identifying it if the matter goes to trial).
- (2) If the Complainant was admitted to hospital, a follow up report from the hospital.
- (3) Object(s) the Accused used, if any, to inflict injuries.

Note:

For harm to amount to a “wound” the continuity of all three layers of the skin must be broken (that is, the mere surface of the skin is not sufficient). Here, ‘*malice*’ means no more than foresight of the risk of bodily harm.

This offence may be made out whether or not the Accused used a weapon or instrument or nothing at all to inflict the wound.

The severity of wounds, the number of wounds, the location and the circumstances in which the wound was inflicted should guide whether the Accused is charged with Section 22 as opposed to Section 20 (below). Section 20 carries a stiffer penalty and so the less serious matters can be charged under Section 22. The Office of the Director of Public Prosecutions determines whether a charge is laid under sections 20 or 22. Consequently, the Office of the DPP should be contacted before a charge is laid under these sections.

### Defences

Possible defences to look out for and hence question witnesses to negate:

- Consent
- Self-defence and defence of other

## Wounding / Causing Grievous Bodily Harm with Intent

- Section 20 CAP 300, Laws of Antigua and Barbuda
- Indictable only offence
- Maximum sentence: Fifteen (15) years imprisonment

Elements:

- Accused unlawfully or maliciously wounds Complainant;
- Accused unlawfully or maliciously inflicts grievous serious harm on the Complainant;
- Accused intends to wound or cause grievous bodily harm to Complainant; or
- Accused intends to resist or prevent the lawful apprehension or detainer of another person.
- There must be a specific intent.

- Exhibits: (1) Medical injury form (it is best to let the Complainant sign or initial the back of the injury form, as a means of identifying it if the matter goes to trial).
- (2) If the Complainant was admitted to hospital, a follow up report from the hospital.
- (3) Object(s) the Accused used, if any, to inflict injuries.

Note: Here, ‘*malice*’ means no more than foresight of the risk of bodily harm.

Grievous bodily harm means "*really serious bodily harm*", or "*serious injury*".

For harm to amount to a “wound” the continuity of all three layers of the skin must be broken; (a mere superficial bruise or break in the surface of the skin is not sufficient to amount to a wound under this section).

or instrument or nothing at all to inflict the wound.

The Office of the Director of Public Prosecutions determines whether a charge is laid under sections 20 or 22 (see above re section 22). Consequently, the Office of the DPP should be contacted before a charge is laid under this section.

### Defences

Possible Defences to look out for and hence question witnesses to negate:

- Consent
- Self-defence and defence of other

## Attempted Murder

- Sections 13-17 CAP 300, Laws of Antigua and Barbuda
- Indictable only offence
- Maximum sentence: Thirty five (35) years imprisonment

### Elements:

- Accused does an act which is more than merely preparatory to commit unlawful killing [*the act must be "more than merely preparatory" because preparation for a crime by itself does not constitute an "attempted crime"*];
- Accused has a specific intention to cause the death of human being;
- There must be more than merely preparatory acts and, although the Accused may threaten death or grievous bodily harm, this may not provide convincing evidence of an intention to kill; unless the words are accompanied by relevant action.

For example, finding and picking up a weapon, and making serious use of it, or making a serious and sustained physical attack without a weapon.

- Exhibits:
- (1) Medical injury form (it is best to let the Complainant sign or initial the back of the injury form, as a means of identifying it if the matter goes to trial).
  - (2) If the Complainant was admitted to hospital, a follow up report from the hospital.
  - (3) Object(s) the Accused used, if any, to inflict injuries.

### Note:

The decision to charge for **Attempted Murder** or **Wounding with Intent** would depend on the nature of the injuries. If the injuries are life threatening, consideration should be given to the particular circumstances of the case (such as anything said and done) to determine which charge is best suited. The Office of the DPP should always be consulted before either charge is laid.

## Defences

Possible defences to look out for and hence question witnesses to negate:

- Consent
- Self-defence and defence of other

## Manslaughter

- Section 5 CAP 300, Laws of Antigua and Barbuda
- Indictable only offence
- Maximum sentence: Thirty five (35) years imprisonment

### Elements:

- Accused by an unlawful act or omission causes the death of another.
- The Accused may have an intention to kill or cause serious bodily harm.
- **Murder** is reduced to **Manslaughter** by virtue of a successful defence of provocation or diminished responsibility. These are partial defences to **Murder**.
- There must be a causal link between the unlawful act and the death of the deceased. At times, there may be intervening factors which affect the liability of the Accused for the death.

### Exhibits:

- (1) Death Certificate
- (2) If the Complainant was admitted to hospital before she or he died, a medical report from the hospital, showing injuries prior to death may be useful.
- (3) Object(s) the Accused used, if any, to inflict injuries which ultimately caused the deceased's death.

### Note:

Unlawful omission is one amounting to culpable negligence to discharge a duty tending to the preservation of life or health, whether such omission is or is not accompanied by an intention to cause death or bodily injury.

## Defences

Possible defences to look out for and hence question witnesses to negate:

- Self-defence and defence of other
- Provocation
- Diminished responsibility

## Murder

- Section 2 CAP 300, Laws of Antigua and Barbuda
- Indictable only offence
- Maximum sentence: Death

### Elements:

- Accused causes death - the total and permanent cessation of blood circulation and respiration, irreversible cessation of all brain function as marking the end of life.
- Accused causes the death by an unlawful act or omission - This distinguishes murder from killings that are done within the boundaries of law, such as an execution, justified self-defense, or the killing of enemy soldiers during a war;
- Accused has malice aforethought at the time of the act or omission - The courts broadened the scope of murder by eliminating the requirement of actual premeditation and deliberation as well as true malice. All that was required for malice aforethought to exist is that the perpetrator act with one of the three states of mind that constitutes "malice.

The three (3) states of mind recognized as constituting "malice" are:

- Intent to cause death, or
  - Intent to do grievous bodily harm;
  - Reckless indifference as to whether the act or omission will cause death or grievous bodily harm.
- The death is of a human – At common law, a fetus was not a human being. Life began when the fetus passed through the birth canal and took its first breath.
  - The death is of another person – The requirement that the person killed be someone other than the perpetrator excludes suicide from the definition of murder.

- Exhibits: (1) Death Certificate
- (2) If the Complainant was admitted to hospital before she or he died, a medical report from the hospital, showing injuries prior to death may be useful.
  - (3) Object(s) the Accused used, if any, to inflict injuries which ultimately caused the deceased's death.

Note:

There must be a causal link between the conduct of the Accused and the death of the deceased. At times, there may be intervening factors which affect the liability of the Accused for the death.

Transferred Malice – if A fires a chop at B but, by mistake or bad aim, C is injured instead and C dies, then A should be charged for the Murder of C.

### **Defences**

Possible defences to look out for and hence question witnesses to negate:

- Self-defence and defence of other
- Provocation
- Diminished responsibility

## Indecent Assault

- Section 14 Sexual Offences Act 1995
- Triable either summarily or on indictment
- Maximum sentence: Five (5) years imprisonment

### Elements:

- Conduct amounting to '*Indecent Assault*' committed by a man or boy against any person.

### Note:

A child under the age of sixteen (16) years cannot give consent so as to prevent an act constituting an assault for the purpose of this section – see section 14(2) of the **Sexual Offences Act**

What is indecent assault is a subjective matter (fact specific): it is conduct of a nature that when a reasonable man considers it, he would deem it "indecent". Any inappropriate contact would be sufficient ground to the offence.

Often, in cases where no sexual intercourse took place, conduct of a sexual nature can still be the basis of a report of Indecent Assault. For example: groping breasts or genitals, kissing.

Contrary to section 15 of the Sexual Offences Act 1995 an offence of serious indecency may be committed with a maximum sentence of ten (10) years if against a person under sixteen and five years against any other person.

An act of "serious indecency" is defined in section 15(3) as an act, other than sexual intercourse (whether natural or unnatural), by a person involving the use of the genital organ for the purpose of arousing or gratifying sexual desire.

## Sexual Intercourse with a Female under 14

- Section 5 Sexual Offences Act 1995
- Indictable offence
- Maximum sentence: Life imprisonment

Elements:

- Complainant had not reached fourteen (14) years of age at the time of the offence.
- The Accused (man or boy) intentionally penetrated the Complainant's vagina with his penis.
- Complainant did not and cannot consent to the penetration.

Exhibits: (1) Medical injury form (it is best to let the Complainant and her Guardian sign or initial the back of the injury form, as a means of identifying it if the matter goes to trial).

(2) The clothing of the Complainant may be useful material evidence particularly if torn or blood stained.

Note:

Penetration, however slight, will be sufficient - see section 23 of the **Sexual Offences Act**

There is no need to show that the Accused ejaculated or that the Complainant was injured in the course of the sexual intercourse.

Evidence of the apparent distressed condition of the Complainant is very useful. Witness can testify as to the demeanour and physical state of the Complainant in the aftermath of the alleged incident.

The Complainant should be examined as soon as practicable after a report of sexual intercourse is made. As far as possible, the medical exam should not be delayed as very telling medical evidence can be lost with the passage of time.

Although a charge of **Incest** under Section 8 or 9 of the **Sexual Offences Act** may be laid when the Accused falls into that category, the practice is to also lay a charge of **Unlawful sexual intercourse of a Female Under the Age of 14** if the Complainant falls into that age group, even if the Accused may be her grandfather, father, step father, foster father, uncle or brother.

### Defences

Possible defences to look out for, and therefore ask questions to negate:

- Mistake as to the Complainant's age is no defence.

## Sexual Intercourse with a Female Aged Between 14 and 16

- Section 6 Sexual Offences Act 1995
- Indictable offence
- Maximum sentence: Ten (10) years imprisonment

### Elements:

- o Complainant had not reached sixteen (16) years of age at the time of the offence but is above the age of fourteen (14) years.
- o The Accused (man or boy) intentionally penetrated the Complainant's vagina with his penis.
- o The Complainant did not consent to the penetration.

Exhibits: (1) Medical injury form (it is best to let the Complainant and her Guardian sign or initial the back of the injury form, as a means of identifying it, if the matter goes to trial).

(2) The clothing of the Complainant may be useful material evidence particularly if torn or blood stained.

### Note:

Consent is not a defence.

Also note if a female has sex with a male under 16, whether or not he consents, she is guilty of an offence under section 7 of the **Sexual Offences Act** with a maximum sentence of seven (7) years imprisonment .

## Defences

Possible defences to look out for, and therefore ask questions to negate:

- He reasonably believed the female was sixteen (16) years or over. For example if the complainant represented that she was over sixteen (16) years or if there were other things which suggested she was over sixteen (16) years
- If the Accused is not more than three years older than the female and the court is of the opinion that the evidence discloses that as between the Accused and the female, the Accused is not wholly or substantially to blame.

## Rape

- Section 3 Sexual Offences Act 1995
- Indictable offence
- Maximum sentence: Life imprisonment

### Elements:

- The Accused (man or boy) intentionally penetrated the Complainant's vagina with his penis.
- The Complainant did not consent to the penetration at the time of the penetration.
- The Accused knew that the Complainant did not consent to the intercourse or was reckless as to whether she consented or not.

Exhibits: (1) Medical injury form (it is best to let the Complainant and her Guardian (if under sixteen (16) years) sign or initial the back of the injury form, as a means of identifying it if the matter goes to trial).

(2) The clothing of the Complainant may be useful material evidence particularly if torn or blood stained.

### Note:

A person consents if she agrees by choice, and has the freedom and capacity to make that choice. Thus, there is no consent if the Complainant's consent is obtained by:

- Threat or force; or
- Use of force; or
- Means of threats or intimidation of any kind; or
- Fear of unlawful harm; or
- Means of false representation as to the nature of the act; or
- In the case of a married woman, by personating her husband.

There is no need to show that the Accused ejaculated or that that the Complainant was injured in the course of the sexual intercourse. And penetration, however slight, will be sufficient – see section 23 of the **Sexual Offences Act**

Evidence of the apparent distressed condition of the Complainant is very useful. Witness can testify as to the demeanour and physical state of the Complainant in the aftermath of the alleged incident.

The Complainant should be examined as soon as practicable after a report of sexual intercourse is made. As far as possible, the medical exam should not be delayed as very telling medical evidence can be lost with the passage of time.

The clothing and bedding of the Complainant, particularly if torn or blood stained, as well injuries to the Complainant or Accused will tend to negative consent.

A female may withdraw her consent in the course of sexual intercourse that was initially consensual. If the Accused continues, he stands liable for Rape.

The relationship between the parties does not create any exemptions. For example: family members, friends, boyfriend or girlfriend, husband or wife.

The prior sexual history of a Complainant will only be relevant if involves the accused – see section 27 of the **Sexual Offences Act**

It is also important to explain to a Complainant that her identity will be protected at all times (section 29 of the **Sexual Offences Act**) and she can give her evidence in private (section 26 of the **Sexual Offences Act**)

## Arson

- Part 1 Malicious Damage Act CAP 258, Laws of Antigua and Barbuda
- Triable on indictment
- Maximum sentence:
  - o Arson of church or chapel (section 2):
    - Ten (10) years imprisonment
  - o Arson of a dwelling-house (section 3):
    - Ten (10) years imprisonment
  - o Arson of any public building (section 4):
    - Ten (10) years imprisonment
  - o Arson of any other building (section 6):
    - Ten (10) years imprisonment
  - o Attempted arson (section 8):
    - Five (5) years imprisonment

### Elements:

- Accused unlawfully or maliciously
- Sets fire
- To the type of building specified

### Note:

For alternative offences consider:

- Damage to ship - see section 35 of the **Malicious Damage Act**;
- Damage in excess of \$500- see section 44 of the **Malicious Damage Act**;
- Any other damage - see section 46 of the **Malicious Damage Act**;

## Dishonestly Receiving

- Section 37 Larceny Act CAP 241, Laws of Antigua and Barbuda
- Triable either summarily or on indictment
- Maximum sentence:
  - o Summary conviction: imprisonment for five (5) years;
  - o Indictable conviction: imprisonment for ten (10) years

### Elements:

- An Accused receives any property which he or she knows to have been stolen - 37(1) of the **Larceny Act**
- It is not necessary that the property be "stolen" in a limited sense; Section 37(1) of the **Criminal Code** specifically extends the scope to property obtained by any offence. However, it is also implicit in the definition of offences such as burglary that handling may apply to the proceeds of these offences.
- The offence of handling is drafted widely enough to criminalize any dishonest dealing with property which has been come by dishonestly. For example, the original thief may also be convicted of a subsequent handling if he later arranges its sale.
- The Accused's knowledge as to the nature of the goods is crucial. This may be based on what the thief says or some other positive information

### Note:

- Any person who receives property
- Without lawful excuse
- Obtained outside of Antigua and Barbuda
- Knowing it to have been stolen; or
- Obtained in any way whatsoever under such circumstances that if the act had been committed in Antigua and Barbuda the person committing it would have been guilty of an offence they shall be guilty of the like offence – see section 37(3) of the **Larceny Act**:

## Stealing

- Section 3 Larceny Act CAP 241, Laws of Antigua and Barbuda
- Triable either summarily or on indictment
- Maximum sentence:
  - Summary conviction – simple larceny three (3) years imprisonment
  - Indictable conviction
    - Section 14 - Larceny in dwelling-house: seven (7) years imprisonment
    - Section 15 – Larceny from the person: seven (7) years imprisonment
    - Section 17 – Larceny of vessel: ten (10) years imprisonment

Under Section 3(1) of the **Larceny Act**, an individual will be guilty of stealing if without the consent of the owner, fraudulently and without a claim of right made in good faith, takes and carries away anything capable of being stolen with intent, at the time of such taking, permanently to deprive the owner thereof.

### *Fraudulently and Without Claim of Right*

A person ought not to have honestly and reasonably believed at the time he took the property that he had right to take and use it.

### *Taking*

“Take” is defined in section 3(2) of the **Larceny Act** as obtaining the possession of the property stolen. This will include any assumption of the rights of an owner.

### *What does it mean to assume the rights of an owner?*

An owner has various rights over his property. This means that if a piece of property has a particular function it would be the right of the owner to use it for that particular function. For example if Thelma owns a car she has the right to drive that car and prevent anyone else from driving it. If Bert takes the car and drives it, this will be seen as appropriation.

### *For a taking to take place do all the rights of the owner have to be assumed?*

NO! For a taking there is no requirement that all the rights of the owner are assumed. The assumption of one of the rights of the owner is sufficient.

### *Does this also include a later assumption where the property had initially been innocently acquired?*

Stealing also covers a later assumption in the situation where the property had initially been acquired innocently – see section 3(2)(c)

### *Property*

Section 2(1) of the **Larceny Act** states that “property” includes money and all other real or personal property.

#### *What is meant by money?*

Money is taken to mean any notes and coins.

#### *What happens if an individual intends to give back the correct amount of money after taking it?*

Unless an individual intends to give back the exact same notes and coins which they have taken they will be deemed to have the intention to permanently deprive a person of those particular notes and coins.

### *Owner*

Section 3(2)(d)(iii) of the **Larceny Act** provides that an owner is any person having possession or control of anything capable of being stolen.

Accordingly this means that a person may be liable for stealing of something which is considered their own property if it is deemed that this property is in the possession or control of another.

#### *What happens if property is given to another person?*

If the individual deals with it in way which is not in line with the instructions given, then this could amount to stealing. The main issue to look at here is whether there is a clear obligation to deal with the property in a particular manner.

#### *What happens if an individual is given the property by mistake?*

If an individual receives property by mistake, he is under an obligation to return the property; a failure to restore the property will amount to stealing by virtue of section 3(2)(c) of the **Larceny Act**.

### *Intention to permanently deprive*

A person taking property which belongs to someone else without meaning for the other person to permanently lose the thing itself is nevertheless to be regarded as having the intention of permanently depriving the other of it if his intention is to treat the thing as his own to dispose of regardless of the true owner’s rights.

**HAVE YOU CONSIDERED RESTRAINT AND CONFISCATION**

## Burglary

- Section 29, Larceny Act CAP 241, Laws of Antigua and Barbuda
- Triable on indictment
- Maximum sentence: Fifteen (15) years imprisonment
- Also consider:
  - o Section 30 – Housebreaking and committing a felony - Imprisonment for seven (7) years
  - o Section 31 – Housebreaking with intent to commit felony – on summary conviction 18 months and conviction on indictment five (5) years imprisonment
  - o Section 32 – Possession of housebreaking instruments – three (3) years imprisonment if a previous conviction seven (7) years imprisonment

### Elements:

- The Accused at night
- breaks and enters the dwelling-house of another; or
- Breaks out of the dwelling house of another
- Having entered with intent to commit any felony; or
- Committed any felony in the dwelling house

### Note:

The expression "dwelling-house" does not include a building although within the same curtilage with any dwelling-house and occupied, unless there is a communication between such building and dwelling-house, either immediate or by means of a covered and enclosed passage leading from one to the other – see section 2(2) of the **Larceny Act**

"Night" means the interval between eight o'clock in the evening and five o'clock in the morning of the next succeeding day – see section 2(1) of the **Larceny Act**

To charge a suspect with burglary, the Police Officer should actually have proof that the person went into the building; that is, have a statement that someone saw the Accused enter the building or the suspect himself admitted in his caution statement that he broke into the building. In the absence of any of the above, where a suspect is found with items reportedly stolen by a Complainant who makes a report of burglary, the offences of 'Stealing' or 'Dishonestly Receiving' should be considered.

## Robbery

- Section 33, Larceny Act CAP 241, Laws of Antigua and Barbuda
- Indictable offence
- Maximum sentence:
  - o Imprisonment for seven (7) years
  - o With offensive weapon or with more than one person commits robbery fifteen (15) years imprisonment
  - o Assault with intent to rob five (5) years imprisonment

### Elements:

1. This requires evidence to prove a **Stealing** as set out in Section 3, of the ***Larceny Act***.
2. The use of any force or causes any harm to any person; or
3. The threat of criminal assault or harm or use of force;

### Note:

- In ***R v Robinson*** [1977] Crim LR 173, CA, the Accused threatened the victim with a knife in order to recover money which he was actually owed. His conviction for robbery was quashed on the basis that Robinson had an honest, although unreasonable, belief in his legal right to the money.
- The use of force must take place immediately before or at the time of the theft or immediately after – see section 33(1)(b) of the ***Larceny Act*** .
- The victim must be placed in apprehension or fear that force would be used immediately before, at the time of the taking of the property or immediately after. A threat is not immediate if the wrongdoer threatens to use force of violence some future time.

**HAVE YOU CONSIDERED RESTRAINT AND CONFISCATION**

## Possession of Unlicensed Firearm /Ammunition

- Section 6(3), Firearms Act CAP 171, Laws of Antigua and Barbuda
- Triable either summarily or on indictment
- Maximum sentence:
  - o Fine of exceeding \$10,000.00 or imprisonment for two
  - o Seven (7) years imprisonment or both

### Elements:

- A firearm may be:
  - Any lethal barrelled weapon capable of discharging any shot, bullet, or missile
  - Any prohibited weapon
  - Any component part of a lethal barrelled weapon or prohibited weapon (for example a magazine for holding bullets or even if the gun is not capable of firing).
  - Any accessory to any lethal barrelled weapon or prohibited weapon which is designed or adapted to diminish the noise, or flash or discharge of the weapon.

### Terms defined:

*“Prohibited weapons”* refers to automatic firearms, grenade, bomb or other similar missile.

*“Component parts”* – any component part of a prohibited weapon is itself a prohibited weapon (***R v Clarke*** (F), 82 Cr App R 308, CA). ***R v Ashton*** states “a component part must be a part that if it were removed, the gun could not function without it”.

*“From which any shot, bullet or other missile can be discharged”* – means the weapon has to be capable of discharging a missile either in its present state or with adaption.

- Ammunition" may be:
  - For any firearm of any kind;

- Every shell, cartridge case, bomb, hand-grenade, bullet or like missile, whether containing any explosive or gas or chemical or not, and whether intended to be discharged from or by any gun or other propelling or releasing instrument or mechanism or not except missiles which can be used only for the purpose of extinguishing fires;
  - Every part of any such shell, cartridge case, bomb, hand-grenade, bullet or missile, whether such shell, cartridge case, bomb, hand-grenade, bullet or missile may have been completely formed at any time or not;
  - Every fuse, percussion cap, or priming cap, adapted or prepared for the purpose of causing the propulsion of or exploding any shell, bomb, hand-grenade, bullet or other projectile;
  - Every bullet clip or cartridge clip;
  - Any explosive when enclosed in any case or contrivance adapted or prepared so as to form a cartridge, charge or complete round for any firearm or any other weapon, or to form any tube for firing explosives, or to form a detonator, or a projectile, which can be used (whether singly or in suitable combinations) as or in connection with, a missile;
- Possession – the Prosecution only has to show that the Accused knew he had something in his possession – see section 5 of the **Firearms Act**. It is irrelevant what he knew or thought it was. Possession is both proprietary and custodial.

Note:

This is a strict liability offence. Once a person has a firearm or in his possession and that person does not have a licence or permit to do so, then the offence is made out.

Whenever a person is charged with [Possession of an Unlicensed Firearm/Ammunition](#), it is up to the Accused to prove that he has such licence.

There is no requirement for the Accused to use a firearm for it to constitute an offence under Section 6(3) of CAP 171. It has to do with possession – whether at their home, in a vehicle, or on his person (wherever he has it).

To prove that a weapon is a firearm, is essential to call evidence as to whether a bullet or missile can be discharged from the weapon in its original state or whether it can be adapted to discharge any missile.

## **Statements**

When a firearm or suspected firearm is recovered, the Police Officer investigating the matter should prepare a statement detailing each weapon, component part and item of ammunition. This statement ought to include a full description of each item, including where it was found and measurements.

It is good practise to have each weapon and component part photographed alongside a scale to indicate dimensions. (For example use a meter rule to measure the length of the barrel – the length of the barrel of a firearm is measured from the muzzle to the point at which the charge is exploded on firing.) Copies of the photographs should be provided to the Office of the Director of Public Prosecutions, and a set initialled and dated for use as exhibits. The weapon itself must be presented at court as an exhibit as well.

The Investigating Officer should at the earliest possible time, but in any event before the matter goes to trial seek the expert advice of a firearms expert. A statement should be prepared by the firearms expert who should include a full description of each weapon and should confirm if the weapon is an imitation firearm. Where it is found to be an imitation firearm, based on his knowledge of firearms, the expert should indicate how closely the weapon resembles a real firearm, and if possible state which.

## Possession of Firearm with Intent to Commit an Offence

- Section 13, Firearms Act CAP 171 , Laws of Antigua and Barbuda
- Triable on indictment
- Maximum sentence: Ten (10) years imprisonment

### Elements:

- An offence under this section is committed when someone uses either (i) a firearm or (ii) an imitation firearm:
  - in the commission of an offence, or
  - to resist his arrest, or
  - to prevent the lawful apprehension or detention of himself or any other person.

### Note:

This offence is triggered by the use of the object.

The firearm need not be real – since the use of an imitation (toy) firearm falls within the scope of the Section.

An imitation firearm is anything that has the appearance of being a firearm, whether or not it is capable of being discharged or not. “If it looks like a firearm (and is used), then it is a firearm.”

There is no requirement for the firearm to be working, or for the Accused to discharge any round. Any component part of a firearm is sufficient to bring it within the scope of the Act.

A person may be charged with possession of [Firearm with Intent to Commit an Offence](#) in addition to any other offence which he may have committed or attempted to commit.

A person, who, for example, uses an imitation firearm or a non-functional firearm in attempting to rob another person, may therefore be charged with [Attempted Robbery](#) and [Possession of a Firearm with Intent to Commit an Offence](#).

## Possession of Firearm with Intent to Injure

- Section 12 Firearms Act, CAP 171, Laws of Antigua and Barbuda
- Triable on indictment
- Maximum sentence: Ten (10) years imprisonment

### Elements:

- o Possession (see Possession Of An Unlicensed Firearm and / or Ammunition)
- o Firearm (see Possession Of An Unlicensed Firearm and / or Ammunition)
- o There has to be an accompanying intent either to:
  - o Endanger life (kill someone); or
  - o Cause serious injury to someone; or
  - o To damage another person's property.

### Note:

This offence is committed when there is something more than simple possession of a firearm.

The Prosecution do not need to prove an immediate or unconditional intention to endanger life, but the intention required for an offence of possessing a firearm with intent to injure may not necessarily be met by the recovery of a loaded weapon.

Even if the person who has the firearm in his possession does not intend to do the ultimate act for himself, but rather to enable someone else to endanger life, wound someone or damage property, the offence is still made out. A person, therefore, who has in his possession a firearm even if that person does not intend to do the act himself, but rather intends that another person does the act, is still liable under this section.

There is no requirement for any life to have been lost, or anyone injured, or any property to be damaged for the offence to be made out. It is the possession of the firearm intending that someone may be killed or injured, or that property be damaged that amounts to an offence.

This offence can only be committed with a real firearm. Consideration should be given to an attempt where the Accused expresses a belief that the weapon was a real firearm.

## Unlawful Use of Firearm

- Section 11, Firearms Act CAP 171 , Laws of Antigua and Barbuda .
- Summary offence
- Maximum sentence: One thousand dollars

A person is liable under this section if s/he either:

- o Unlawfully discharges a firearm or ammunition on or within forty yards of any public road or in any public place.

Elements:

There are three (3) separate and distinct ways of committing an offence under this section:

- (1) Actually discharging the firearm ;
- (2) Attempting to discharge the weapon, even though it is impossible to shoot because the weapon may not, for example, have been charged;
- (3) While being armed with a firearm, threatening to discharge the weapon; however, a mere threat to shoot without having the weapon in their possession does not amount to an offence under this section.

Note:

The quality of the firearm is irrelevant whether or not the firearm is in good working order is not a requirement to ground a charge under either the second or third manner in which this offence may be committed.

## Defences

A person can be acting lawfully under this section for shooting at a trespassing animal, or in the protection of his person or property or of the person or property of someone else - see section 11(1)(a) and (b) of the **Firearms Act**

## Possession of a Controlled Drug

- Section 6(2) Misuse of Drugs Act, CAP 283 Laws of Antigua and Barbuda
- Triable either summarily or on indictment
- Sentence: See Schedule two depends on type of Controlled Drug

### Elements:

- The object in question ought to be a Controlled Drug.
- The Accused ought to have had the controlled drug in his or her Possession.

### Note:

Controlled drugs and their classifications are specified in section three of the Drug Abuse (Prevention and Control) Act. Controlled drugs include:

Class A Drugs: Cocaine, Morphine, Opium

Class B Drugs: Cannabis and Cannabis Resin, Ganja, Codeine

Class C Drugs: Diazepam

There are two elements of possession – physical and mental elements. Custody or control is the physical element; it involves proof that the thing is in the custody of the Accused or subject to his control. Something which a person has in his possession shall be taken to include anything subject to his control whilst it is in someone else’s custody. Knowledge of possession is the mental element – the Accused must know that he is in possession of something which is, in fact, a controlled drug (whether he knows it is a controlled drug or not); that is, the Accused knows that the thing in question is under his control, he need not know what its nature is but so long as he knows that the thing, whatever it is, is under his control, then it is in his possession. Ignorance of, or mistake as to the quality of, the substance in question does not prevent the Accused being in possession of it provided that the substance turns out to be a controlled drugs.

A person does not possess something of which he is completely unaware, so for example, if a drug is put into someone’s pocket without his knowledge he is not in possession of it. However, a person remains in possession of something even if he has forgotten about it.

Look out for the state of the drugs: is it compressed?

Establishing a proper chain of continuity of evidence is essential. You must look for evidence connecting the drug or other exhibit found to its eventual destination; for example, in the case of a drug found by the police the chain might be:

- officer finding drug;
- officer to whom drug is passed who places it in the drugs' cabinet;
- officer who removes drug from cabinet and takes to laboratory;
- analyst who examines drug and makes certificate.

There must be a clearly established link between each stage in order to avoid the danger of continuity being lost.

Where a person is convicted of a Drug Offence, other than Drug trafficking, the court shall order the forfeiture of any opium pipe or other article or the controlled drug in respect of which the offence was committed.

Also beware of any need to retrain assets where drug trafficking – contact the FIU

## **Defences**

Pursuant to section 6(4) of the **Misuse of Drugs Act** the Accused shall be acquitted:

- If he prevented another committing an offence in connection with the Controlled Drug
- Or was taking all reasonable steps to deliver the Controlled Drug to the police

Pursuant to section 31 of the **Misuse of Drugs Act** the Accused shall be acquitted:

- If he or she proves that he or she neither believed nor suspected that the substance or product in question was a controlled drug, or
- If he or she proves that he or she believed the substance or product in question to be a controlled drug, or a controlled drug of a description, such that, if it had in fact been that controlled drug or a controlled drug of that description, he or she would not at the material time have been committing any offence to which this section applies.

In any proceedings for an offence to which section 30 of the Drug (Prevention of Misuse) Act applies it will be for the Accused to give sufficient evidence rather than prove.

## Possession of a Controlled Drug with Intent to Supply

- Section 6(2) Misuse of Drugs Act, CAP 283 Laws of Antigua and Barbuda
- Triable either summarily or on indictment
- Sentence: See Schedule two depends on type of Controlled Drug

### Elements:

- The object in question ought to be a Controlled Drug.
- The Accused ought to have had the controlled drug in his or her Possession.
- An intention to supply the controlled drug which the Accused had in his / her possession.

### Note:

Mode of Trial is determined mostly by the quantity and class of the drugs. Generally small quantities are tried summarily. Larger quantities, especially Class A drugs should be tried on indictment.

The Prosecution need only establish that the Accused had the controlled drug in his possession with the intention of supplying it to another. A mistake as to the drug in question is irrelevant.

“Intent to supply” means intent on the part of the possessor of the drugs to supply, and not an intention that the drug should be supplied by another person.

Supplying includes distributing. There is a supply where the Accused purchases drugs on behalf of a third party, and then transfers the drug to that party.

Where a person is convicted of a Drug Offence, other than Drug trafficking, the court shall order the forfeiture of any opium pipe or other article or the controlled drug in respect of which the offence was committed.

Prosecutor for this charge should consider making an application for restraint and / or a confiscation order.

### **Proof of intent to supply**

An intent to supply may be proved by direct evidence in the form of admissions or witness testimony, for example, surveillance evidence.

Another method of proving an intent to supply is by inference. Evidence from which an intent to supply may be inferred will include at least one or, more usually, a combination of the following factors:

- Possession of a quantity inconsistent with personal use.
- Possession of uncut drugs or drugs in an unusually pure state suggesting proximity to their manufacturer or importer.
- Possession of a variety of drugs may indicate sale rather than consumption.
- Evidence that the drug has been prepared for sale. If a drug has been cut into small portions and those portions are wrapped in foil or film, then there is a clear inference that sale is the object.
- Drug related equipment in the care and/or control of the suspect, such as weighing scales, cutting agents, bags or wraps of foil (provided their presence is not consistent with normal domestic use).
- Diaries or other documents containing information tending to confirm drug dealing, which are supportive of a future intent to supply, for example, records of customers' telephone numbers together with quantities or descriptions of drugs.
- Money found on the defendant was considered in **R v Batt** (1994) Crim. L. R 592. It is not necessarily evidence of future supply. It may be evidence of supply in the past but on its own the money is not evidence of a future intent to supply.
- Evidence of large amounts of money in the possession of the defendant, or an extravagant life style which is only prima facie explicable if derived from drug dealing, is admissible in cases of possession with intent to supply if it is of probative significance to an issue in the case **R v Morris** (1995) 2 Cr. App. R. 69.
- Extravagant lifestyle, but only when that is of probative significance to an issue in the case.

### **Defences**

See above re possession and sections 6(4) and 31 of the **Misuse of Drugs Act**

**HAVE YOU CONSIDERED RESTRAINT AND CONFISCATION**

## Human Trafficking

- Section 13 of **Trafficking in Persons (Prevention) Act**, Act Number 12 of 2010.
- Summary offence
- Maximum sentence:
  - o Fine: Four hundred thousand dollars; or
  - o Twenty (20) years imprisonment, or both

Elements:

Accused engages in trafficking in person

To remember the three key elements, remember the 'AME' of human trafficking is:

- a) Activity:** recruitment, transportation, transfer, harbouring and receipt of person.
- b) Means:** threat, use of force, coercion, abduction, fraud, deception, abuse of power or vulnerability and/or giving payments or benefits.
- c) Exploitation:** such as - sexual slavery, forced labour, slavery or similar practices, removal of organs and other forms of exploitations.

Note:

It is important to distinguish human trafficking from smuggling. A person cannot consent to human trafficking. Smuggling is usually a consensual arrangement but if the agreed conditions change, a human trafficking situation may arise.

The three (3) elements must be present when dealing with adult victims. In cases involving children (below age 18), once there is activity and exploitation then the offence is made out. No need to show the means. (section 15(3))

It is a form of modern day slavery. Anyone can be a victim.

It can occur within or outside the borders of Antigua and Barbuda. For example: 'A' can be trafficked from Jolly Harbour to St John's in the same way 'A' can be trafficked from Belize to Antigua and Barbuda.

The Human Trafficking Office of the Police Force is the resource agent for investigations of this nature.

Victim and Witness care is crucial in these cases.

The trafficked person, once a foreigner, is immune from prosecution for any immigration related or other criminal offence linked to the trafficking – see section 28 of the **Trafficking in Persons (Prevention) Act**

Useful evidence would come from the trafficked person(s), suspects, forensic analysis, computer and cell phone analysis, premises, vehicles, documents, Immigration, financial investigations.

Powers for Investigators include:

- Search and seizure with a warrant – see section 32 of the **Trafficking in Persons (Prevention) Act**
- Search and seizure without a warrant – see section 33 of the **Trafficking in Persons (Prevention) Act**
- Access to computerized data. This power also includes the right of the Officer to request and obtain any password, encryption code, decryption code, software or hardware or any other means required for his access to enable comprehension of the computerized data. Failure to give an Officer conducting a search access to computerized data is an offence with liability on summary conviction to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding two years – see section 34 of the **Trafficking in Persons (Prevention) Act**
- An Officer may, by notice in writing, require a person who he believes to be acquainted with the facts and circumstances of an investigation to attend before him for examination; produce to him any personal property, record, report or document; or furnish him with a written statement made on oath or affirmation setting out such information as he may require. Any such person is legally bound to answer all questions unless to do would incriminate himself or expose to a penalty or forfeiture of property – see section 36 of the **Trafficking in Persons (Prevention) Act**
- See sections Part V of the **Trafficking in Persons (Prevention) Act** re protection of persons trafficked

**HAVE YOU CONSIDERED RESTRAINT AND CONFISCATION**

## Money Laundering

- Section 61 of the ***Proceeds of Crime Act*** No.13 of 1993
- Indictable only
  - o A fine of two hundred thousand dollars or twenty (20) years imprisonment or both
  - o A fine of five hundred thousand dollars if a body corporate
- Section 3 of the ***Money Laundering Prevention Act*** No. 9 of 1996
- Triable either summarily or on indictment
  - o Seven (7) years imprisonment and to a fine of two hundred thousand dollars which may extend to one million dollars

### Elements:

“Money laundering” covers all procedures to conceal the origins of criminal proceeds so that they appear to originate from a legitimate source.

### Three (3) stages of money laundering:

- Placement – physical disposal of cash proceeds. Typically, it includes:
  - a. Depositing illegally obtained cash at a financial institution (often included in a portion of apparently legitimate cash to obscure the audit trail).
  - b. Physically moving cash between jurisdictions.
  - c. Giving cash loans to businesses which appear to be legitimate or are connected to a legitimate business – thereby converting cash into debt.
  - d. Using cash to purchase high value goods either for personal use or as gifts for others.
  - e. Purchasing negotiable assets in one-off transactions.
- Layering – separating the proceeds of crime from their source by creating sometimes complex layers of financial transactions designed to mask their origin and hamper the investigation and or tracing of the proceeds.
- Integration – plugging the laundered proceeds back into the economy as apparently legitimate business funds.

Note:

One of the recurring features of money laundering is the urgency with which, after a brief cleansing, the assets are often re-invested in a new criminal activity or withdrawn from the financial institution in which it was invested to begin with.

An Accused's money laundering activities are usually more readily detected:

- During cross border cash flows
- When the cash enters, is transferred within or out of the financial system.
- When investments are made or other assets acquired.
- When companies are incorporated or trusts are formed.

Consider cash seizure provisions under section 18A of the **Money Laundering Prevention Act**

**HAVE YOU CONSIDERED RESTRAINT AND CONFISCATION**

## Identification & Description

Police Officers investigating a matter should always ADVOKATE identity. That is, ask about...

A	-	Amount of time under observation
D	-	Distance
V	-	Visibility
O	-	Obstructions
K	-	Known or seen before if so
A	-	Any reason to remember
T	-	Time
E	-	Errors

Some vital questions a Police Officer should ask a Complainant or other witness to help ascertain the identity of the person to be charged (especially when the person's identity is in dispute) are:

- 1) How long did the witness observe the Accused?
- 2) How close / far away from the witness was the Accused?
- 3) What were the lighting conditions at the time? That is, how was the witness able to see the suspect? For example: sun light, street lights,
- 4) Was the observation impeded in any way? That is, was there anything blocking the person from seeing what was happening? For example: traffic, persons, buildings
- 5) Had the witness ever seen the Accused before if so, how often?
- 6) If the witness had only seen the Accused occasionally had the witness any special reason for remembering the Accused?

Officers should bear in mind and include in their notes:

- 1) The length of time which has passed between the incident and the identification to the Police;
- 2) Any material discrepancy between the description of the Accused given to the Police by the witness when at the time of the incident and his actual appearance now.

## Description

Descriptions should include the following:

- 1) Male / Female
- 2) Approximate age
- 3) Ethnicity (Caucasian / Indian / Black etc)
- 4) Complexion (Skin colour)

- 5) Height: always use approximate heights. (For example: he is between 5'4 and 5'10 or about 5'8 [NOT he is 5'6].)
- 6) Build (for example: really slim / medium build / very fat)
- 7) Hairstyle (for example: long / short / plaited / dread locks / natural / relaxed) and hair colour
- 8) Distinguished features (for example: tattoos, scars, facial hair, include if he wore glasses or braces)
- 9) Clothing from Top to bottom
- 10) Was he carrying anything? – If so describe the something.

Where a vehicle is involved in the commission of the offence, the witness should be asked about the:

- a) Colour
- b) Make (Toyota / Nissan / Suzuki / Honda)
- c) Model (Corolla / Rav4 / Noah)
- d) Type (car / jeep / truck / van)
- e) License plate number (T/R/H/P/F ###)
- f) Any other distinguishing features (special rims / tyres; additional lights, writings / graphics)

## Identification Procedure

### Glossary for this Section

*Appropriate adult* – the parent, guardian, relative, responsible adult or someone having care for a juvenile or a person who is mentally disordered or mentally vulnerable.

*Group identification* – when the witness sees the suspect in an informal group of people.

*Identification officer* – a police officer of at least the rank of Sergeant, who conducts an identification parade and who is charged with the responsibility of ensuring that the identification process is fair.

*Identification parade* – when a witness sees the suspect in a line with others who have an appearance similar to that of the suspect.

*Responsible adult* – an adult aged at least 18-years who is not a police officer or someone employed by the police, or has any connection with the particular matter being investigated.

*Video identification* – when a witness is shown moving images of a known suspect, together with similar images of others who have a similar appearance to the suspect.

*Voice identification parade* – when persons assembled on an identification parade are asked to say or repeat a pre-determined set of words for the benefit of the witness.

## **Introduction**

There is a clear distinction between “identification” and “recognition”.

- A witness to a crime can recognise the perpetrator whom that witness knows or has seen before.
- Identification occurs when that witness does not know or never saw the suspect before, but is able to point out that person on a subsequent occasion.

Usually, an identification parade will consist of a number of persons being lined up from which the witness may choose the person whom they can identify as having committed an offence. However, there may be other types of identification done, such as voice identification, video identification or identification from photographs.

The general rule is that an identification parade should be held whenever it would serve a useful purpose.

Lord Brown of Eaton-Under-Heywood, in ***Ronald John v The State of Trinidad and Tobago*** [2009] UKPC 12 said that: “*Plainly and identification parade serves a useful purpose whenever the police have a suspect in custody and a witness who, with no previous knowledge of the suspect, saw him commit the crime (or saw him in circumstances relevant to the likelihood of his having done so, for example en route to a robbery).*”

It is desirable and preferable for a witness to identify the person as being the one whom that witness saw committing the crime, prior to seeing the accused in court. While 'dock identification' is legally admissible (it is possible and permissible for a witness to identify a suspect during the course of a trial), an identification parade (IP) is always the ideal.

## **The Who**

A suspect, whom a witness is likely to identify, should be invited to be a part of an IP.

Any witness who has seen an offender committing a crime, or who has seen someone in circumstances that are relevant to the investigation of a crime, ought to be given an opportunity to identify the person whom they saw on that previous occasion.

## **Why is an IP held?**

The identification parade is an important tool to be utilised in ensuring that the right person is being prosecuted for an offence. It is held to:

- Test a witness' ability to identify the person they saw on a previous occasion (that is, that the person identifies is allegedly the person who committed the offence); and
- Provide safeguards against mistaken identification.

A witness must have given a description of the suspect prior to the conduct of an IP. That witness must as well indicate whether it is likely that they would be able to identify the suspect if they were to see that person again. Clearly, if no details were provided to the authorities by the witness then there would be no basis for the holding of an IP.

The details of the witness' description of the suspect ought to be available to the suspect or his lawyer.

## **When must an IP be held?**

There are a number of situations that would lead to the holding of an IP.

- There is a suspect in custody and the witness, with no previous knowledge of the suspect, saw him commit the crime (or saw him in circumstances relevant to the likelihood of his having done so).
- The suspect requests an identification parade.
- The witness claims to know the suspect and the suspect denies this.
- The description of the suspect is general and/or the alias is common.
- The suspect disputes being the person the witness saw.
- The case is serious and the identification of the suspect is critical.
- The previous identification was done under adverse circumstances.
- The witness expresses an ability to recognise the suspect or where there is a reasonable chance of the witness being able to do so.

## **When an IP is not required:**

Even though it is useful to conduct an IP so that there is a proper identification of a suspect, there are clearly circumstances which render the holding of an IP unnecessary.

1. The suspect is presented to the police by the witness, for example while walking down the street the witness calls to the police officer and points out the suspect. If it is a one to one identification carried out under good conditions and there is no risk of corruption of the reliability of the identification then made, the identification by the witness is complete and no further identification is required nor would an identification parade serve any useful purpose. What

constitutes an actual and complete identification depends on the circumstances of the case.

2. It is not practicable or would serve no useful purpose for example where it is not disputed that the suspect is well known to the witness.
3. The suspect admits being at the scene and gives an account of what took place and the eye-witness does not see anything which contradicts this.
4. If the appearance of the suspect is so unusual that it would be impossible to get similarly appearing persons to stand on parade with him or her.
5. The witness indicates that there is no reasonable possibility of picking out the suspect on a parade. (Here the witness is unable to sufficiently describe the suspect).
6. The witness identifies a distinguishing feature only, such as clothing, rather than the offender. (They can only say for example that “he was wearing a blue jeans pants and a dark coloured jersey.”)

### **Where can an IP be done?**

There is no restriction or limitation on the venue as to where an identification of a suspect may take place. There is no requirement for the identification to take place only at a police station. If a witness sees and identifies a suspect among an informal group of people, then that identification is as valid as one done at an IP.

The conduct of a formal IP parade by a Sergeant or more senior rank should however be done in a controlled environment.

Group identification may be done covertly, without the suspect's consent. In these circumstances, the witness may be in a public place where other persons are and the witness in passing makes a spontaneous identification of the suspect.

### **How is an IP to be conducted?**

The identification parade should be conducted by an officer not below the rank of Sergeant and who is not connected in any way with investigating the case.

The parade should be held as soon as reasonably practicable.

Children under the age of 16, vulnerable or intimidated witnesses should be accompanied to any identification parade by a responsible adult or support person who is not or is not likely to become a witness in the case. This adult should not be allowed to influence the witness in any way in arriving at the decision.

All unauthorized (an unnecessary) persons should be excluded from the room where the identification parade is being conducted.

1. The reason for the identification parade should be explained to the suspect.
2. The procedure should be explained to the suspect including their right to have a lawyer or friend present. The suspect must be given reasonable time to have a lawyer or friend present.
3. The suspect must also be advised of his right to refuse to participate in the parade. (He must also be told that the fact of his refusal could be brought to the attention of the jury if he is in fact charged).

4. They members of the parade should be provided with the details of the description of the suspect given by the witness who is to attend the parade.
5. The description of the suspect should be taken as close in time as possible to the commission of the crime.
6. The identification parade should consist of at least 8 persons in addition to the suspect (9 persons in all). They must, so far as possible resemble the suspect in age, height, dress, general appearance and position in life. Their clothing should not be too different, for example the suspect should not be the only person wearing a coloured shirt or a long sleeved shirt. It is important that the members are similar in appearance to the suspect and not to the description of the accused given by the witness.
7. Only one suspect should be on parade at a time unless there are two suspects who are similar in appearance in which case they should be paraded together with 12 other persons. Where there is more than one suspect, they are to be paraded in separate parades. The separate parade should be made up of all new members.
8. If the suspect has an unusual physical feature (eg. scar, tattoo, distinctive hair style or hair colour) that cannot be replicated on the persons taking part in the parade, efforts must be made to conceal that feature on the suspect and the other persons in the parade. (For example: If a plaster is used to cover a scar on the face, all persons should have a plaster on that part of their face. If the suspect suffers from some disability steps should be taken to conceal this, for example if he is missing a leg all the members could be asked to stand behind a counter. Or if he is missing an

eye then all the members should wear an eye patch over the corresponding eye, or if he wears glasses then all members should be provided with glasses. Similarly if the suspect is exceptionally tall or small and difficulty is being experienced in finding persons of similar height, then all members could be asked to be seated).

9. When uniformed police officers form a parade, any identifying numbers or badges should be concealed. Officers of similar rank and uniform should be used to make up the parade.
  
10. When the suspect is brought in for the parade, they should be asked if they have any objection to the arrangement of the persons or to any other persons participating in it and to state the reasons for the objection. If the objection is reasonable, steps should be made to remove the ground for objection. If it is not practicable to do so the suspect should be told why their objections cannot be met and the objection, reason for it and reason it could not be met should be recorded.
  
11. The suspect must be allowed to choose his/her position in the line. If there is more than one witness, once that witness has left the room and before the next has entered, the suspect should be told that if he/she wishes he/she may change position in the line. The position of the suspect should be recorded on each occasion.
  
12. Each position in the line must be clearly numbered. If the witness cannot read or does not know numbers some other means of identifying the members should be used such as symbols or pictures.
  
13. Arrangements must be made so that witnesses are not able to communicate with each other or overhear another witness who has

already seen the parade; or see any of the members of the parade; or see the suspect before or after the parade; or see or be reminded of any photograph or description of the suspect prior to going in to the parade.

14. Immediately before the witness inspects the parade the witness should be told that: *“The person you saw may or may not be present in the line up. If you cannot make a positive identification please say so. You should not make any decision until they have looked at each member of the parade at least twice.”*
15. When the officer in charge is satisfied that the witness has looked at each member twice, he/she shall ask the witness if the person they saw is one of the members and if so to indicate the number of the person (or symbol as the case may be).
16. If the witness wishes to hear a member of the parade speak or adopt a particular posture or move, they should first be asked whether they can identify any person on the parade by appearance only. When the request is to hear a person speak the witness should be told that the members of the parade were picked based on appearance only. Members of the parade may then be asked to comply with the request.
17. If the witness requests that the object used to conceal some unusual physical feature be removed, the person may be asked to remove it.
18. If the witness is unable to make a positive identification they should be asked: *“Is there anyone on the parade who looks like the person?”* If they point out someone, they should be asked: *“In what*

*way does he/she look like the person?”* All responses of the witness should be recorded.

19. If the witness makes any identification after the identification parade, the suspect and his/her lawyer or friend shall be notified. When this occurs consideration should be given as to allowing the witness a second opportunity to identify the suspect.
20. After the parade the witness should be asked if they had seen any broadcast or published picture or description of the suspect. The answer should be recorded.
21. After the last witness has left, the suspect should be asked whether they want to make any comments on the conduct of the parade. Any comments made should be recorded.
22. The suspect should sign a copy of the record of the identification parade.
23. The details of the persons comprising the identification parade must be recorded. It is desirable for a photographic record of the parade to be kept.

## **Photographs and Video Parades**

Where a suspect is unknown, it is permissible for a witness to be shown photographs to possibly make a positive identification of a suspect.

Video identification can also be done instead of an IP. The witness is shown images (preferably moving ones) of the suspect along with similar images of other persons.

**For More Information** Please review **ANNEX D - CODE OF PRACTICE FOR THE IDENTIFICATION OF PERSONS** in the **Guide**

## Common General Defences

### Alibi

An alibi is a type of defence that asserts an Accused was somewhere else when the crime they are accused of took place.

Ensure to ask the suspect when he raises a defence of alibi (that is, I wasn't ...[where ever the crime occurred]... I was ...[somewhere else]...):

- Where exactly is this place?
- For what purpose were you there?
- Who were you there with?
- When did you arrive?
- How long were you there for?
- What were you doing there during this time?
- Do you know anyone else who was there who wasn't in direct company with you?
- What time did you leave?
- Where did you go after you left?
- Where were you before you went there?
- Do you have any tangible proof that you were there (e.g if the person was out of the state the stamp in their passport)

Note:

Whether or not an Accused mentions alibi under caution, it is always good for Police Officers to prepare case files with the intention to nullify alibi in the event it is raised at trial. To disprove the alibi therefore, leads relating to names of persons who were at the scene of the crime should always be taken and at least two of those persons questioned to put the Accused on the scene.

Where the suspect has stated up front that he has an alibi:

- Get the names and addresses or contact numbers if possible for all of the persons the names whether they were in his direct company or not – these persons should be contacted to verify or whether they were at this place for how long and whether the suspect was actually there or not – do not ask for the suspect by name, ask each person who else, if anyone, they can remember was there.

- A further statement should be taken from the Complainant if in his original statement it wasn't mentioned who else was in the immediate vicinity of the crime or within seeing / hearing distance; those persons should then be interviewed to verify whether or not the Accused was actually there or not – these persons should be spoken to, regardless of whether they wish to give a written statement or not; the Officer should include the confirmation or denial in his investigating notes for the benefit of the Prosecutor.

## Duress

The general nature of the defence of duress is that the Accused was forced by someone else to break the law under an immediate threat of serious harm or unjustified imprisonment befalling himself or someone else (whose safety the Accused would reasonably regard himself as responsible), that is, he would not have committed the offence but for the threat.

The Accused bears the burden of introducing evidence of duress and it is then up to the prosecution to prove beyond all reasonable doubt that the Accused was not acting under duress. If a defence is established it will result in an acquittal.

### The Threat

The defence must be based on threats to kill or do serious bodily harm. Threat of injury to property is not grounds enough to constitute a defence of duress; it has to be one of serious human physical harm. If the threats are less terrible they should be matters of mitigation only.

The threats must be directed to the commission of a particular offence. In ***R v Hurley*** [1967] VR 526, it was held that: duress by threats was only made out where the threatener nominated the crime to be committed by the Defendant; it was not enough for the threatener to demand money from the Defendant to justify a defence of duress in relation to robbery.

## **Immediacy**

The threat must be "immediate" or "imminent" in the sense that it is operating upon the Accused at the time that the crime was committed. If a person under duress is able to resort to the protection of the law, he must do so. When the threat has been withdrawn or becomes ineffective, the person must desist from committing the crime as soon as he reasonably can.

## **Test**

It is essential that the threat be effective at the time the crime was committed. The test to be applied is:

Was a threat of physical harm to the Accused (including imprisonment) made, which was of such gravity that it might well have caused a sober person of reasonable firmness sharing the Accused's characteristics (in most cases age and sex), when placed in the same situation to act in the same way as the Accused acted?

## **Limitations to the availability of Duress**

Duress is a defence to all crimes except murder, attempted murder and *semble*, treason involving the death of a sovereign. This defence is not available to a person charged with murder whether as principal or as an aider, abettor, counsellor or procurer. Although this defence is not open to a charge of attempted murder, it is available on a charge of conspiracy to murder.

In relation to firearm offences:

A person charged with an offence of having a firearm with intent to commit an indictable offence while having the firearm with him, duress is a potential defence only to the intended offence – NOT in relation to the firearm.

## **Negating Duress**

When a defence of duress is raised by an Accused, or based on his statement, a Police Officer anticipates that duress may be raised; it is prudent for the Officer to try to attain evidence to negate this defence. Such may include showing that the Accused failed to avail himself of an opportunity which was reasonably open to him to render the threat ineffective. Once this is proved, the threat in question can no longer be relied upon – that is the defence would have been negated.

Some suggested questions:

- Are you suffering from a mental illness at the moment?
- Do you have a history of any mental illness? (If he does, the Officer should consider confirming this with the Mental Health Centre, and / or ascertain exactly what exactly the attributes of his mental illness is; that is, is the Accused suffering from mental illness or impairment or recognised psychiatric condition which might make him more susceptible to threats and act as the Accused did?) (NOTE: evidence of this is not conclusive that the Accused is not guilty – it might assist the jury to determine whether a reasonable person suffering from such condition might have been compelled to act as the Accused did.)
- Did the alleged duress occur at all?
- If so, please explain what happened, in as much details as possible, including how you felt as the different events occurred. In particular:
  - o Were you threatened?
  - o Who threatened you?
  - o What is the relationship like between you and \_\_the person who threatened you\_\_?
  - o How long have you known this person?
  - o What affiliation is there between you and the person?
  - o What, if any, weapon was used at the time of the threat?
  - o What was your reaction to the threat?
  - o Did you believe \_\_insert person who threatened the Accused's name here\_\_ when he said he would do...?
  - o Was there a gap between the threat and the commission of the offence?
  - o Were you supervised whilst committing the offence?

Note:

If a person by joining an illegal organisation or a similar group of men with criminal objectives and coercive methods, voluntarily exposes and submits himself to illegal compulsion, he cannot rely on duress to which he has voluntarily exposed himself as an excuse either in respect of the crimes he commits against his will or in respect of his continued but unwilling association with those capable of exercising upon him the duress he calls in aid.

## Necessity (Duress of Circumstances)

This defence relates to a situation where a person is driven to commit a crime by force of circumstances.

## Provocation

Provocation is only a defence to murder to reduce it to manslaughter.

In an attempt to negate provocation, details need to be included in the suspect's caution statement, if he chooses to give one that speaks to the questions of:

- a) Whether the deceased's conduct, that is, the things the deceased did or said, or both, caused the Accused to lose his self-control and to [insert the fatal act].
- b) To negate provocation, one has to prove that the Accused was not acting in a sudden and temporary loss of self-control when he killed the deceased, or that it could not have caused an ordinary person [where relevant of the same age as the Accused] to lose control and act as the Accused acted with intent to cause death or grievous bodily harm.

Consideration must be given to the conduct in question as a whole and in the light of any history of disputation between the deceased and the Accused, since particular acts or words which considered separately could not amount to provocation, may, in combination or cumulatively, be enough to cause the Accused to actually lose his self-control.

In considering whether the alleged provocative conduct caused the Accused to lose control, you must consider the gravity or level of seriousness of the alleged provocation so far as the Accused is concerned, that is, from this particular Accused's perspective. This involves assessing the nature and degree of seriousness for the Accused of the things the deceased said and did just before the fatal attack.

Matters such as the Accused's [race, colour, habits, relationship with the deceased and age] are all part of this assessment. And you must appreciate that conduct which might not be insulting or hurtful to one person may be extremely hurtful to another because of such things as that person's age, sex, race, ethnic or cultural background, physical features, personal

attributes, personal relationships or past history. So ask questions that would illicit answers to cover these issues.

So you must consider the gravity of the suggested provocation to this particular Accused. The acts relied on by the Accused as relevant in affecting his mind and causing him/her to lose self-control include:

- c) Evidence of provocative conduct and of its effect upon the Accused.
- d) Refer to the special characteristics of the Accused raised by the evidence. (This would include in an appropriate case the 'battered person syndrome'.) It will be necessary to find out if there are any independent witnesses to attest to the history of violence, or previous Police reports made, medical records that speak to this.

- Was the Accused acting while provoked?

Another question is whether the Accused acted in the heat of passion caused by sudden provocation and before there was time for his passion to cool. The expression "sudden" involves a consideration of whether the Accused acted in the heat of passion, unpremeditated and in a temporary loss of self-control caused by the provocation.

Line of questioning should be along the lines of:

- Do you know ... [deceased's name]?
- What, if any, relationship did you have with him/her?
- What was your relationship history with him/ her like before this incident?
- On the date in question, did you see the person? Where, when, what happened on that day between you and him/her?
- Have you had thoughts of doing the fatal act or similar acts to the deceased before?
- How long have you planned to do the alleged acts or similar acts to the deceased?
- What did the deceased do / say to trigger your reaction on that day?
- Did you at any point ask the deceased to stop?
- Did you walk away?
- How did you come by doing (whatever was done to the person)?
- Would you say you lost control of yourself at any point during the incident?
- If so, how long would you say you lost control for?
- Who, if anyone else, was there?

Question witnesses if any were present, to find out whether:

- The conduct the Accused relies on as provocation did or did not occur;
- Describe the Accused's reaction (facial expression, bodily language, anything said or done).

## Self Defence

The law as it relates to self-defence, allows a person to use such force as is reasonable in the circumstances as he believes them to be for the purposes of:

- Defending him/her self
- Defending another
- Defending his / her property
- Preventing a crime; or
- Lawful arrest.

For self-defence to be a successful defence, the amount of force used must be reasonable and proportionate to the threat.

To disprove this defence therefore, the Complainant should be asked for a detailed account of what happened. Any witnesses (or names supplied) should be asked about the situation as well.

It will not be self-defence if the Accused was the instigator or aggressor.

In questioning the suspect, the following questions should be asked:

In respect of a Fight:

- Do you know ... [Complainant's name]?
- What, if any, relationship do you have with him/her?
- On the date of the incident, did you see the person? Where, when, what happened on that day between you and him/her?
  - What instigated the altercation on that day?
  - Have you had any previous altercations with the Complainant before that day?
  - Was it a situation where the Complainant hit the suspect 1<sup>st</sup> or was the Complainant was about to strike?
  - What was the Complainant going to strike you with?

- Was the Complainant armed with a weapon of any sort, or about to arm himself? If so, what?
- Are you on any medication? If so, what?
- Do you suffer any side effects when you take this medication? Were you experiencing any of these on the day in question?
- What is your age?
- What is the Complainant's age, do you know?
- Describe the Complainant for me.
- Do you know if he has a disability of any kind?
- Were you drinking alcohol before the incident? If so what and how much?
- Would you consider yourself to have been intoxicated at the time of the incident?
- Do you know if the Complainant was drinking before the incident?
- What is your height and weight? (if he is obviously larger than the victim)
- Inquire whether the Accused was afraid of the victim. This question can be asked to negate self-defence when you are fairly certain that the Accused will answer in the negative.
- What injuries the suspect sustained?
- Does the suspect know of the injuries the Complainant sustained?
- What did the suspect do to cause the Complainant to suffer those injuries?
- What was the Complainant doing at the time the suspect did these things that injured the Complainant?
- Who strike the last blow?
- Did anyone intervene?
- Confirm with the Accused that he fled the scene before the Police arrived and that he did not call 999, if applicable, or go to the Police to report the incident.

If the Accused's explanation of the actions which resulted in injuries appears logistically impossible, ask the Accused to demonstrate how the injuries were sustained.

The Police Officer should ensure to include his statement if the suspect chooses not to give a written statement whether the Accused complained of any injuries, and if so, confirm that he did not receive any or minimal injuries, whichever is the case.

## Conclusion

The contents of this booklet are meant to be a guide only.

If any Police Officer having read the offences and the elements to be proved for each, as outlined herein and s/he:

- believes the case s/he is investigating has unique features, or
- has further queries or concerns...

...it is always best advised to seek clarification or assistance before a matter goes to trial. Whilst some matters have specialist Offices to which the Senior Police Officer should refer (for example money laundering – FIU); it is advisable that the Office of the Director of Public Prosecutions be informed at as early a stage as possible in investigation (particularly indictable and sexual based offences) for guidance.

The **Office of the Director of Public Prosecutions** can be reached Mondays – Fridays, 8am – 4.15pm: