

A BILL

entitled

JUSTICE AND COMMUNITY SAFETY REFORM ACT 2026

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*Introductory*

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WHEREAS it is expedient to amend the Evidence Act 1905, the Criminal Code Act 1907 and the Bail Act 2005 to make provision to effectively address the escalating crisis of gang violence in Bermuda;

Be it enacted by The King’s Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

*Introductory*

**Citation**

- 1 This Act may be cited as the Justice and Community Safety Reform Act 2026.

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### *Witness Anonymity*

#### **Amendment of the Evidence Act 1905**

2 The Evidence Act 1905 is amended by inserting the following after section 68E (alternative ways of giving evidence)—

#### **“PART IVB**

#### **WITNESS ANONYMITY**

##### **Preliminary**

##### **Interpretation of this Part**

68F In this Part—

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

“investigation anonymity order” has the meaning given in section 68I(l);

“qualifying criminal investigation” has the meaning given in section 68H;

“qualifying offence” has the meaning given in section 68G;

“witness” means a person who is obliged to give or has agreed to give a statement or evidence or both in any criminal proceedings;

“witness anonymity order” has the meaning given in section 68N.

##### **Anonymity in Investigations**

##### **Qualifying offences**

68G For the purposes of this Part, a “qualifying offence” is a serious arrestable offence under section 3 of the Police and Criminal Evidence Act 2006.

##### **Qualifying criminal investigations**

68H For the purposes of this Part, a “qualifying criminal investigation” is a criminal investigation conducted by the Bermuda Police Service or any other body with investigative powers under the laws of Bermuda, wholly or in part with a view to ascertaining—

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

##### **Investigation anonymity order**

68I (1) A magistrate may grant an order (“an investigation anonymity order”), in relation to a specified person, prohibiting the disclosure of information—

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

(2) The prohibition in an investigation anonymity order is subject to subsections (3) to (8).

(3) A person does not contravene an investigation anonymity order by the disclosure of such information as regards the specified person as is described in subsection (1), if the person disclosing the information does not know and has no reason to suspect that such an order has been made in relation to the specified person in connection with the specified qualifying criminal investigation.

(4) A person does not contravene an investigation anonymity order by disclosing such information as regards the specified person described in subsection (1)(b), if the person disclosing the information does not know and has no reason to suspect that the information disclosed is information that might enable the specified person to be identified as a person of the sort described in subsection (1)(a) in relation to the specified qualifying criminal investigation.

(5) A person does not contravene an investigation anonymity order by disclosing the existence of that order to another person, provided that the person making the disclosure knows that the other person is already aware that the specified person is a person who is or was able or willing to assist a criminal investigation relating to the qualifying offence.

(6) A person who discloses information to which an investigation anonymity order relates, does not contravene the order if—

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

(7) A person does not contravene an investigation anonymity order by a disclosure made in pursuance of—

- (a) a requirement imposed by any law; or
- (b) an order of a court.

(8) A person who discloses such information as regards another person as is described in subsection (1) may not rely on subsection (7) in a case where—

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

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

and the disclosure for the purposes of seeking such a determination is not a contravention of an investigation anonymity order.

(9) In this section, “specified” means specified in the investigation anonymity order concerned.

**Application for investigation anonymity order**

68J (1) An application for an investigation anonymity order may be made to a magistrate by—

- (a) the Commissioner of Police; or
- (b) the Director of Public Prosecutions.

(2) An applicant for an investigation anonymity order shall not be required to give notice of the application to—

- (a) a person who is suspected of having committed or who has been charged with an offence to which the specified qualifying criminal investigation relates; or
- (b) that person’s legal representative.

(3) An applicant for an investigation anonymity order shall, unless the magistrate directs otherwise, inform the magistrate of the identity of the person who would be specified in the order.

(4) A magistrate may determine the application without a hearing.

(5) If a magistrate determines an application for an investigation anonymity order without a hearing, the magistrate shall notify the applicant of the determination.

(6) The Minister responsible for justice may, by order subject to the negative resolution procedure, amend subsection (1).

(7) In this section, “specified” means specified in the application concerned.

**Conditions for making an order**

68K (1) A magistrate may make an investigation anonymity order if satisfied that there are reasonable grounds for believing that—

- (a) a qualifying offence has been committed;
- (b) the person who would be specified in the order—
  - (i) has reasonable grounds for fearing intimidation or harm if identified as a person who is or was able or willing to assist

the criminal investigation as it relates to the qualifying offence;

(ii) is able to provide information that would assist the criminal investigation as it relates to the qualifying offence; and

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

(c) the person likely to have committed the qualifying offence was, at the time the offence was committed—

(i) at least sixteen years of age; or

(ii) likely to have been a member of a group falling within subsection (2).

(2) A group falls within this subsection if—

(a) it consists of three or more persons;

(b) it is possible to identify the group by a shared pattern of criminal activities engaged in by its members; and

(c) the majority of the persons in the group are at least sixteen years of age.

(3) If it is suspected that the qualifying offence was committed by two or more persons, it is sufficient for the purposes of subsection (1)(c) that the magistrate is satisfied that there are reasonable grounds for believing that the condition in that paragraph is satisfied in relation to any one of those persons.

(4) The Minister responsible for justice may, by order subject to the negative resolution procedure, amend subsection (1)(b)(i) and (c) and subsection (3).

**Appeal against refusal to make an order**

68L (1) Where a magistrate refuses an application for an investigation anonymity order, the applicant may appeal to the Supreme Court against that refusal.

(2) An applicant may not appeal under subsection (1) unless the applicant indicates—

(a) in the application for the order; or

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

that the applicant intends to appeal a refusal.

(3) If an applicant has indicated an intention to appeal a refusal, a magistrate who refuses an application for an investigation anonymity order shall

nonetheless make the order as requested by the applicant and that order shall be endorsed with the words “subject to appeal”.

(4) An order made under subsection (3) has effect until the appeal is determined or otherwise disposed.

(5) When considering an appeal under subsection (1), the court shall consider afresh the application for an investigation anonymity order and section 68J(3) to (5) applies accordingly to the determination of the application by the court.

**Discharge of order**

68M (1) A magistrate may discharge an investigation anonymity order if it appears to him to be appropriate to do so, either—

- (a) on his own initiative; or
- (b) on an application by—
  - (i) the person on whose application the order was made; or
  - (ii) any person specified in the order.

(2) An application may not be made under subsection (1)(b) unless there has been a material change of circumstances since the relevant time.

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

(4) If an application to discharge an investigation anonymity order is made by a person other than the person specified in the order, the magistrate may not determine the application unless—

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

(5) A party to these proceedings may appeal to the Supreme Court against the magistrate’s decision.

(6) If during the proceedings a party indicates an intention to appeal against a determination to discharge the investigation anonymity order, a magistrate who makes such a determination shall provide for the discharge of the order not to have effect until the appeal is determined or otherwise disposed of.

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

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

**Anonymity in Criminal Proceedings**

**Witness anonymity order**

68N (1) The Supreme Court may make an order ("a witness anonymity order") requiring such specified measures to be taken in relation to a witness in criminal proceedings in the Supreme Court as the court considers appropriate to ensure that the identity of the witness is not disclosed in, or in connection with, those proceedings.

(2) Measures that may be required to be taken include measures for securing—

- (a) that the witness's name and other identifying details may be—
  - (i) withheld;
  - (ii) removed from materials disclosed to any party to the proceedings;
- (b) that the witness may use a pseudonym;
- (c) that the witness is not asked questions of any specified description that might lead to the identification of the witness;
- (d) that the witness is screened to any specified extent;
- (e) that the witness's voice is subjected to modulation to any specified extent.

(3) Subsection (2) does not affect the generality of subsection (1).

(4) Nothing in this section authorises the court to require—

- (a) the witness to be screened to such an extent that the witness cannot be seen by—
  - (i) the judge or other members of the court, if any;
  - (ii) the jury, if there is one; or
- (b) the witness's voice to be modulated to such an extent that the witness's natural voice cannot be heard by any person within paragraph (a)(i) and (ii).

(5) In this section, "specified" means specified in the relevant witness anonymity order.

**Application for witness anonymity order**

68O (1) The prosecutor or the defendant in criminal proceedings may apply to the Supreme Court for a witness anonymity order in relation to a witness in those proceedings

(2) Where an application is made by the prosecutor, the prosecutor—

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- (a) shall, unless the court directs otherwise, inform the court of the identity of the witness; and
  - (b) shall not be directed by the court to disclose to any other defendant or his legal representative—
    - (i) the identity of the witness; or
    - (ii) any information that might enable the witness to be identified.
- (3) Where an application is made by the defendant, the defendant—
  - (a) shall inform the court and the prosecutor of the identity of the witness; and
  - (b) shall not be directed by the court to disclose to any other defendant or his legal representative—
    - (i) the identity of the witness; or
    - (ii) any information that might enable the witness to be identified.
- (4) Where the prosecutor or the defendant proposes to make an application under this section in respect of a witness, any relevant material that is disclosed by or on behalf of that party before the determination of the application may be disclosed in such a way as to prevent—
  - (a) the identity of the witness; or
  - (b) any information that might enable the witness to be identified,from being disclosed except as required by subsection (2)(a) or (3)(a).
- (5) In this section, “relevant material” means any document or other material which falls to be disclosed, or is sought to be relied on, by or on behalf of the party concerned in connection with the proceedings or proceedings preliminary to them.
- (6) The court shall give every party to the proceedings the opportunity to be heard on an application under this section.
- (7) The court may, notwithstanding subsection (6), hear one or more parties in the absence of a defendant and his legal representative, if it appears to the court to be appropriate to do so in the circumstances of the case.
- (8) Nothing in this section is to be taken as restricting any power to make rules of court.

### **Conditions for making an order**

68P (1) Upon an application pursuant to section 68O, the Supreme Court may make a witness anonymity order only if it is satisfied that the following conditions are met—

- (a) that the measures to be specified in the order are necessary—
  - (i) in order to protect the safety of the witness or another person or to prevent any serious damage to property; or
  - (ii) in order to prevent real harm to the public interest, whether affecting the carrying on of any activities in the public interest or the safety of a person involved in carrying on such activities, or otherwise;
- (b) that, having regard to all the circumstances, the taking of those measures would be consistent with the defendant receiving a fair trial; and
- (c) that the importance of the witness's testimony is such that in the interests of justice the witness ought to testify and—
  - (i) the witness would not testify if the proposed order were not made; or
  - (ii) there would be real harm to the public interest if the witness were to testify without the proposed order being made.

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

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

**Relevant considerations**

68Q (1) When deciding whether the conditions in section 68P are met in the case of an application for a witness anonymity order, the Supreme Court shall have regard to—

- (a) the considerations mentioned in subsection (2); and
  - (b) such other matters as the court considers relevant.
- (2) The considerations referred to in subsection (1) are—
- (a) the general right of a defendant in criminal proceedings to know the identity of a witness in the proceedings;
  - (b) the extent to which the credibility of the witness concerned would be a relevant factor when the weight of his evidence comes to be assessed;
  - (c) whether evidence given by the witness might be the sole or decisive evidence implicating the defendant;

- (d) whether the witness's evidence could be properly tested, whether on grounds of credibility or otherwise, without his identity being disclosed;
- (e) whether there is any reason to believe that the witness—
  - (i) has a tendency to be dishonest; or
  - (ii) has any motive to be dishonest in the circumstances of the case,  
having regard, in particular, to any previous convictions of the witness and to any relationship between the witness and the defendant or any associates of the defendant; and
- (f) whether it would be reasonably practicable to protect the witness's identity by any means other than by making a witness anonymity order specifying the measures that are under consideration by the court.

**Warning to jury**

68R Where, on a trial on indictment with a jury, evidence has been given by a witness in relation to whom a witness anonymity order applies, the judge shall give the jury such warning as the judge considers appropriate to ensure that the fact that the order was made in relation to that witness does not prejudice the defendant.

**Discharge or variation of order**

68S (1) Where the Supreme Court has made a witness anonymity order in relation to a witness in criminal proceedings, it may in those proceedings discharge or vary the order if it appears to the court to be appropriate to do so in view of the conditions in section 68P and the relevant considerations in section 68Q.

- (2) The court may discharge or vary a witness anonymity order—
  - (a) on an application made by a party to the proceedings if there has been a material change of circumstances since the relevant time; or
  - (b) on its own initiative.
- (3) The court shall give every party to the proceedings the opportunity to be heard—
  - (a) before determining an application made to it under subsection (2); or
  - (b) before discharging or varying the order on its own initiative.
- (4) The court may, notwithstanding subsection (3), hear one or more of the parties to the proceedings in the absence of a defendant in the proceedings

and his legal representative, if it appears to the court to be appropriate to do so in the circumstances of the case.

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

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

**Discharge or variation of order after criminal proceedings have come to an end**

68T (1) Where the Supreme Court has made a witness anonymity order in relation to a witness in criminal proceedings and those proceedings have come to an end, it may discharge or vary the order if it appears to the court to be appropriate to do so in view of—

- (a) the conditions in section 68P and the relevant considerations in section 68Q; and
- (b) such other matters as the court considers relevant.

(2) On an application made either by a party to the original criminal proceedings or by the witness, the court may discharge or vary a witness anonymity order if there has been a material change of circumstances since the relevant time.

(3) The court may not determine an application made to it under subsection (2) unless in the case of each of the parties to the original criminal proceedings and the witness—

- (a) it has given the person the opportunity to be heard; or
- (b) it is satisfied that it is not reasonably practicable to communicate with the person.

(4) Subsection (3) does not prevent the court hearing one or more of the persons mentioned in that subsection in the absence of a person who was a defendant in the original criminal proceedings and that person’s legal representative, if it appears to the court to be appropriate to do so in the circumstances of the case.

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

- (a) the time when the original criminal proceedings came to an end; or
- (b) if a previous application has been made under subsection (3), the time when the application, or the last application, was made.

**Discharge or variation by Court of Appeal**

68U (1) This section applies where the Supreme Court has made a witness anonymity order in relation to a witness in trial proceedings, and a defendant has in those proceedings been—

- (a) convicted;
- (b) found not guilty by reason of insanity; or
- (c) found to be under a disability and to have done the act charged in respect of an offence.

(2) The Court of Appeal may, on an appeal by the defendant from the trial proceedings, discharge or vary the order if it considers it appropriate to do so having regard to—

- (a) the conditions in section 68P;
- (b) the considerations in section 68Q; and
- (c) any other matters it considers relevant.

(3) The Court of Appeal may not discharge or vary the order unless in the case of each party to the trial proceedings—

- (a) it has given the person the opportunity to be heard; or
- (b) it is satisfied that it is not reasonably practicable to communicate with the person.

(4) The Court of Appeal may, notwithstanding subsection (3), hear one or more of the parties to the trial proceedings in the absence of a person who was a defendant in the trial proceedings and that person's legal representative, if it appears to the court to be appropriate to do so in the circumstances of the case.

(5) In this section, "trial proceedings" means the criminal proceedings from which the appeal lies.

**Miscellaneous**

**Withholding of information on the grounds of public interest immunity**

68V Nothing in this Part affects the common law rules as to the withholding of information on the grounds of public interest immunity.

**Review**

68W (1) The Director of Public Prosecutions shall review the operation of this Part and prepare a report of that review.

(2) The Director of Public Prosecutions shall lay a copy of the report before both Houses of the Legislature before the end of the period of three years beginning with the date on which this Part was commenced.

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### **Penalties**

68X A person who discloses information in contravention of—

- (a) an investigation anonymity order; or
- (b) a witness anonymity order,

commits an offence and is liable on summary conviction to a fine of \$100,000 or to imprisonment for ten years or to both.

### **Regulations**

68Y The Minister responsible for justice may, by regulations subject to the negative resolution procedure, prescribe all matters which are required or permitted to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to the provisions of this Part.”.

### *Offences of Assaulting and Intimidating Officials*

#### **Amendment of the Criminal Code Act 1907**

3 The Criminal Code Act 1907 is amended by inserting the following after section 310 (assault on police officer, customs officer etc)—

#### **“Assault on, and intimidation of, judicial officer, prosecutor or Member of the Legislature**

310A (1) Any person who assaults an official in the execution of his duty or any person acting in aid of such official while so acting, with the intention of doing bodily harm to or wounding or who does bodily harm to or who wounds such official or person, is guilty of an offence, and is liable on conviction by a court of summary jurisdiction to imprisonment for five years, or on conviction on indictment to imprisonment for twenty-five years.

(2) Any person who assaults an off-duty official as a consequence of, or in retaliation for, actions undertaken by that official in the execution of his duty, or because of the official’s status as an official, with the intention of doing bodily harm to or wounding or who does bodily harm to or who wounds such official, is guilty of an offence, and is liable on conviction by a court of summary jurisdiction to imprisonment for five years, or on conviction on indictment to imprisonment for fifteen years.

(3) Any person who, by written or spoken word or conduct, threatens an official with any injury to his person, reputation or property, or to the person, reputation or property of anyone in whom the official is interested, with intent to cause alarm to the official, or to cause the official to do any act which he is not legally bound to do, or to omit to do any act which he is legally entitled to do, or to prevent the official from executing any of his duties, as a means of avoiding the execution of such threat, is guilty of an offence, and is liable on conviction by a court of summary jurisdiction to imprisonment for five years, or on conviction on indictment to imprisonment for ten years.

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(4) No prosecution shall be instituted under this section without the consent of the Director of Public Prosecutions.

(5) In this section, “official” means—

- (a) a judicial officer;
- (b) a prosecutor;
- (c) a member of the Legislature;
- (d) a person who is serving as a juror.”.

### *Breach of Bail Condition and Right to Refer Bail Decision*

#### **Amendment of the Bail Act 2005**

4 The Bail Act 2005 is amended—

- (a) by inserting the following after section 10 (liability to arrest for absconding or breaking conditions of bail)—

#### **“Offence of breaching a bail condition**

10A (1) A person who—

- (a) has been released on police bail under section 5A; and
- (b) wilfully or unlawfully breaches any of the conditions of the police bail,

commits an offence and is liable on summary conviction to a fine of \$3,000 or to imprisonment for 12 months.

(2) A person who—

- (a) has been released on bail in criminal proceedings; and
- (b) wilfully or unlawfully breaches any of the conditions of the bail,

commits an offence and is liable on summary conviction to a fine of \$25,000 or to imprisonment for three years.

(3) No proceedings for an offence under subsection (1) or (2) shall be instituted except by or with the consent of the Director of Public Prosecutions.”;

- (b) by inserting the following after section 14A (offences against electronic monitoring equipment)—

#### **“Referral of bail decision**

14B (1) Where the Magistrates Court refuses to grant bail to a defendant charged with, or convicted of, a relevant offence, the defendant may refer that decision to the Supreme Court for reconsideration.

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(2) A defendant who wishes to refer a decision under subsection (1) shall serve written notice on the Supreme Court and the Director of Public Prosecutions before the end of the period of seven working days beginning with the day after the day on which the decision of the Magistrates Court is given to the defendant.

(3) Where the Magistrates Court grants bail to a defendant charged with, or convicted of, a relevant offence, the prosecutor may refer that decision to the Supreme Court for reconsideration.

(4) A prosecutor who wishes to refer a decision under subsection (3) shall serve written notice on the Supreme Court and the Director of Public Prosecutions before the end of the period of four working days beginning with the day after the day on which the decision of the Magistrates Court is given to the defendant.

(5) A referral under subsection (3) may be made only if, before bail was granted, the prosecutor made representations to the Magistrates Court that bail should not be granted.

(6) Reconsideration of a decision referred to the Supreme Court under this section is by way of rehearing and the Supreme Court may confirm, reverse or modify the decision of the Magistrates Court.

(7) In this section—

- (a) a “relevant offence” is an offence that is—
  - (i) triable on indictment only; or
  - (ii) triable either way;
- (b) “working day” means a day other than—
  - (i) a Saturday; or
  - (ii) a public holiday.”.

### *Miscellaneous Provisions*

#### **Transitional application of section 2**

5 The amendments made to the Evidence Act 1905 by section 2 apply to criminal investigations and criminal proceedings in cases where—

- (a) the investigation, trial or hearing begins on or after the commencement of that section; or
- (b) the investigation, trial or hearing has begun, but has not ended, before the commencement of that section.

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### **Commencement**

6 This Act shall come into operation on such date or dates as the Minister responsible for justice may appoint by notice published in the Gazette.

## **JUSTICE AND COMMUNITY SAFETY REFORM BILL 2026**

### **EXPLANATORY MEMORANDUM**

This Bill seeks to amend the Evidence Act 1905, the Criminal Code Act 1907 and the Bail Act 2005 to make provision to effectively address the escalating crisis of gang violence in Bermuda.

Clause 1 provides the title.

Clause 2 amends the Evidence Act 1905 to introduce investigation anonymity orders and witness anonymity orders in respect of qualifying criminal investigations.

Clause 3 amends the Criminal Code Act 1907 to create offences of assault on and intimidation of a judicial officer, prosecutor or members of both Houses of the Legislature.

Clause 4 amends the Bail Act 2005 to create an offence of breach of a bail condition and introduce a right to refer a magistrate's bail decision to the Supreme Court.

Clause 5 makes transitional provision to apply the amendments to the Evidence Act 1905 made by clause 2 to criminal investigations and criminal proceedings that begin or continue on or after the commencement of clause 2.

Clause 6 provides the commencement provision.