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Fifth Session Fifth Parliament Republic of Trinidad
and Tobago



REPUBLIC OF TRINIDAD AND TOBAGO

Act No. 31 of 2000

[L.S.]

An Act to amend the Sexual Offences Act, 1986

[Assented to 25th September, 2000]

ENACTED by the Parliament of Trinidad and Tobago as Enactment
follows:—

1. This Act may be cited as the Sexual Offences Short title
(Amendment) Act, 2000.

Interpretation
Act No. 27 of 1986

2. In this Act, “Act” means the Sexual Offences Act, 1986.

Section 2
amended

3. Section 2 of the Act is amended by inserting in appropriate alphabetical order the following definitions:

“ ‘cohabitant’ means a person in a cohabitational relationship in accordance with the Cohabital Relationships Act, 1998;

No. 30 of 1998

‘grievous sexual assault’ means—

- (a) the penetration of the vagina or anus of the complainant by a body part other than the penis of the accused or third person as the case may be;
- (b) the penetration of the vagina or anus of the complainant by an object manipulated by the accused or third person, as the case may be, except when such penetration is accomplished for medically recognised treatment;
- (c) the placing of the penis of the accused or third person, as the case may be, into the mouth of the complainant; or
- (d) the placing of the mouth of the accused or third person as the case may be, onto or into the vagina of the complainant.

Section 4 repealed
and substituted

4. Section 4 of the Act is repealed and the following section is substituted:

“Rape

4. (1) Subject to subsection (2), a person (“the accused”) commits the offence of rape when he has sexual intercourse with another person (“the complainant”)—

- (a) without the consent of the complainant where he knows that the complainant does not consent to the intercourse or he is reckless as to whether the complainant consents; or

(b) with the consent of the complainant where the consent—

- (i) is extorted by threat or fear of bodily harm to the complainant or to another;
- (ii) is obtained by personating someone else;
- (iii) is obtained by false or fraudulent representations as to the nature of the intercourse; or
- (iv) is obtained by unlawfully detaining the complainant.

(2) A person who commits the offence of rape is liable on conviction to imprisonment for life and any other punishment which may be imposed by law, except that if—

- (a) the complainant is under the age of twelve years;
- (b) the offence is committed by two or more persons acting in concert or with the assistance or in the presence, of a third person;
- (c) the offence is committed in particularly heinous circumstances;
- (d) the complainant was pregnant at the time of the offence and the accused knew that the complainant was pregnant; or
- (e) the accused has previously been convicted of the offence of rape,

he shall be liable to imprisonment for the remainder of his natural life.

(3) The Court or body may order a person who is convicted of an offence under this Act, to pay to the complainant adequate compensation which shall be a charge on the property of the person so convicted.

(4) The provisions of subsection (3) shall not deprive the complainant of the right to claim compensation in any other Court, save that the Court that awards further compensation may take the order under subsection (4) into account when it makes a further award.

(5) This section also applies to a husband in relation to the commission of the offence of rape on his wife.

(6) In subsection (5) “husband” or “wife” includes a cohabitant within the meaning of the Cohabital Relationships Act, 1998.”.

Section 4A
inserted

5. The following section is inserted after section 4:

“Grievous
sexual
assault

4A. (1) Subject to subsection (2), a person (‘the accused’) commits the offence of grievous sexual assault when he commits the act on another person (‘the complainant’)—

(a) without the consent of the complainant where he knows that the complainant does not consent to the act or he is reckless as to whether the complainant consents; or

(b) with the consent of the complainant where the consent—

(i) is extorted by threat or fear of bodily harm to the complainant or to another;

(ii) is obtained by personating someone else;

(iii) is obtained by false and fraudulent representations as to the nature of the act;

(iv) is obtained by unlawfully detaining the complainant.

(2) Subsections (2) to (4) of section 4 applies, *mutatis mutandis*, to the offence of grievous sexual assault as it does to the offence of rape.

(3) This section also applies to a husband in relation to the commission of the offence of grievous sexual assault on his wife.

(4) In subsection (3) “husband” or “wife” includes a cohabitant within the meaning of the Cohabital Relationships Act, 1998.”.

No. 30 of 1998

6. Section 5 of the Act is hereby repealed.

Section 5 repeal

7. Section 7(1) of the Act is amended by deleting the word “five” and substituting the word “twelve” and by adding after the word “years” in line five the words “for a first offence and to imprisonment for fifteen years for a subsequent offence”.

Section 7 amended

8. Section 9(2)(b) of the Act is amended by deleting the words “ten years” and substituting the words “life imprisonment”.

Section 9 amended

9. Section 10(2)(b) of the Act is amended by deleting the words “ten years” and substituting the words “twenty-five years”.

Section 10 amended

Section 11 amended **10.** Section 11(1) of the Act is amended by deleting the words “ten years” and substituting the words “twenty-five years”.

Section 12 amended **11.** Section 12(1) of the Act is amended by deleting the words “ten years” and substituting the words “twenty-five years”.

New section 12A inserted **12.** The Act is amended by inserting after section 12 the following new section:

“Power of
arrest

12A. A police officer may take into custody, without warrant, a person who has committed, or who the police officer has reason to believe has committed an offence under section 6, 7, 8, 9, 10, 11 or 12.”.

Section 13 amended **13.** Section 13(1)(b) of the Act is amended by deleting the words “ten years” and substituting the words “twenty-five years”.

Section 14 amended **14.** Section 14(1) of the Act is amended by deleting the words “ten years” and substituting the words “fifteen years”.

Section 15 amended **15.** Section 15(1) of the Act is amended by inserting after the words “five years” the words “for a first offence and to imprisonment for ten years for a subsequent offence”.

Section 16 amended **16.** Section 16(1)(a) of the Act is amended by inserting after the words “ten years” the words “for a first offence and to imprisonment for fifteen years for a subsequent offence”.

New section 29A inserted **17.** The Act is amended by inserting after section 29 the following new section:

“Admissibility
of video
recorded
evidence
No. 28 of 1999

29A. The provisions of section 19B of the Administration of Justice (Miscellaneous Provisions) Act, 1996, applies *mutatis mutandis*, to proceedings under this Act.”.

18. The Act is amended by repealing section 31 and inserting the following new section:

“Mandatory
reporting of
suspected
abuse of
minors

31. (1) Any person who—

- (a) is the parent or guardian of a minor;
- (b) has the actual custody, charge or control of a minor;
- (c) has the temporary custody, care, charge or control of a minor for a special purpose, as his attendant, employer or teacher, or in any other capacity; or
- (d) is a medical practitioner, or a registered nurse or midwife, and has performed a medical examination in respect of a minor,

and who has reasonable grounds for believing that a sexual offence has been committed in respect of that minor, shall report the grounds for his belief to a police officer as soon as reasonably practicable.

(2) Any person who without reasonable excuse fails to comply with the requirements of subsection (1), is guilty of an offence and is liable on summary conviction to a fine of fifteen thousand dollars or to imprisonment for a term of seven years or to both such fine and imprisonment.

(3) No report made to a police officer under the provisions of subsection (1) shall, if such report was made in good faith for the purpose of complying with those provisions, subject the person who made the report to any action, liability, claim or demand whatsoever.

“Obstructing
prosecution

31A. Where a person prevents a minor from—

- (a) giving a statement to the police; or
- (b) testifying,

in proceedings relating to a sexual offence, he commits an offence and is liable on summary conviction to a fine of twenty thousand dollars and to imprisonment for a term of ten years.

Admissibility
of minor's
statement

31B. (1) Without prejudice to any other written law, where the Court is satisfied that a minor is being prevented from giving evidence and where a statement is made in any written form or manner by a minor, or written in any form or manner by another person on behalf of the minor, and upon the dictation of the minor, that statement may be admissible in a trial as evidence of any fact of which direct oral evidence of the minor would be admissible.

(2) The Court may admit into evidence the following statement made by a minor:

- (a) a statement made to and written by the police;
- (b) a statement made in the form of a statutory declaration;
- (c) a statement written by the minor himself;
- (d) a statement written by another person on behalf of a minor who cannot write.

(3) The following provisions shall have effect in relation to any written

statement of a minor tendered in evidence under this section:

- (a) the minor shall state his age and that an adult of her choice was present with him when it was made;
- (b) if the statement is written on behalf of a minor, it shall be signed by both the minor and the person who wrote it and it shall be dated;
- (c) if the statement is written on behalf of a minor who cannot write, the person who wrote the statement shall read it to the minor before he puts his mark or thumbprint on it and it shall be accompanied by a declaration of the person who wrote it that it was read to the minor and that he appears to understand it and he agreed to it;
- (d) if the statement is written on behalf of a minor who cannot read, the person who wrote the statement shall read it to him before he signs it and it shall be accompanied by a declaration of the person who wrote it that it was read to the minor and he appeared to understand it and he agreed to it;
- (e) if the statement refers to any other document, the copy of the statement given to any other party to the proceedings shall be accompanied by a copy of that document or by such information as may be necessary in order to

enable the party to whom it is given to inspect the document or a copy of it.

(4) The prosecution shall give a copy of the statement to any other party to the proceedings ten clear days before the prosecution tenders it into evidence.

(5) Any document or object referred to and identified in a written statement tendered in evidence under this section shall be treated as if it had been produced as an exhibit and identified in Court by the witness.

(6) A minor whose written statement is tendered in evidence under this section shall be treated as a person who had been examined by the Court.

Statement in documents that appear to have been prepared for purposes of criminal proceedings or investigations

31C. (1) Without prejudice to any other written law, where a statement, referred to in section 31B, appears to the Court to have been prepared for the purposes of—

(a) pending or contemplated criminal proceedings; or

(b) a criminal investigation,

the statement shall not be tendered in evidence in a trial without leave of the Court, and the Court shall not give leave unless it is of the opinion that the statement ought to be admitted on the interest of justice.

(2) In considering whether the admission of a statement under subsection (1) would be in the interest of justice, the Court shall have regard—

(a) to the contents of the statement;

- (b) to any risk of unfairness to the accused, or if there is more than one accused to any one of them, if it is likely that the statement can be controverted and the person making the statement does not attend to give oral evidence in the proceedings;
- (c) to any other circumstances that appears to the court to be relevant.

(3) A written statement mentioned in this section shall be tendered in evidence by the prosecution anytime before the prosecution closes its case against the defendant—

- (a) if the statement is written by the minor, by the prosecution submitting the statement to the Court; or
- (b) if the statement is written on behalf of a minor, by calling the person who wrote the statement to put the statement into evidence.

(4) Where a statement is tendered into evidence under subsection (2), it shall be read to the Court, and the defendant is entitled to challenge its admissibility before it is admitted into evidence.

(5) Where the defendant exercises his right under subsection (4), the Judge or Magistrate shall conduct a *voir dire* and decide whether the whole or any part of the statement is admissible into evidence.

False written
statements
tendered in
evidence

31D. A minor who, in a written statement tendered in evidence under section 31B wilfully makes a statement material in those proceedings which he knows to be false or does not believe to be true commits an offence and is liable on summary conviction to committal to the Youth Training Camp or some other similar institution for one year.

Screen for
minor

31E. The Court may allow a minor, who is appearing in a matter before it, to be barred from the view of the accused.”.

Section 32 amended

19. Section 32 of the Act is amended by—

- (a) inserting before the word “After” occurring in line one of subsection (1), the words “Before or”;
- (b) deleting in subsection (1)—
 - (i) the words “or as the accused” occurring in the third line;
 - (ii) the words “or the accused” occurring in the second line of paragraph (a);
 - (iii) the word “(a)”; and
 - (iv) paragraph (b);
- (c) deleting the definition of the word “accused” occurring in subsection (4).

New Part inserted

20. The Act is amended by inserting after section 34 the following new Part:

“PART III

NOTIFICATION REQUIREMENTS FOR SEX OFFENDERS

Persons liable
to notification
requirements

34A. (1) A person shall be subject to the notification requirements of this Part where—

- (a) he has been convicted of a sexual offence to which this part applies and he has been sentenced to a term of imprisonment;

- (b) such sentence has been commuted;
or
- (c) he has been convicted of such offence, but has not been dealt with for the offence.

(2) The court before which a person is convicted of an offence shall, upon passing a sentence, or dealing with the matter in any other manner, specify the period of time during which the convicted person shall be subject to notification requirements in accordance with the following table:

TABLE

<i>Description of Person</i>	<i>Applicable Period</i>
A person who, in respect of the offence, is or has been sentenced to imprisonment for life but such sentence has been commuted or for a term of ten years or more	An indefinite period
A person who, in respect of the offence, is or has been sentenced to imprisonment for a term of more than five years but less than ten years	A period of ten years commencing with the date of the sentence
A person who, in respect of the offence, is or has been sentenced to imprisonment for a term of five years or less	A period of seven years commencing with that date
A person of any other description	A period of five years commencing with that date

(3) Subsection (4) applies where a person is sentenced in respect of two or more sexual offences—

- (a) to consecutive terms of imprisonment; or

(b) to terms of imprisonment which are partly concurrent.

(4) Subsection (2) shall have effect as if the person had been sentenced in respect of each of the offences to a term of imprisonment which—

(a) in the case of consecutive terms, is equal to the aggregate of those terms;

(b) in the case of concurrent terms, is equal to the aggregate of those terms after making such deduction as may be necessary to secure that no period of time is counted more than once.

Notification
requirements

34B. (1) A person who is subject to notification requirements shall, within fourteen days of his sentence or the commutation of his sentence as the case may be, or of his being dealt with under section 34A(1)(c), notify to the police in the local police area the following information:

(a) his name and, where he also uses one or more other names, each of those names;

(b) his home address;

(c) his date of birth.

(2) A person subject to notification requirements shall before the end of the period of fourteen days beginning with—

(a) his using a name which has not been notified to the police under this section;

(b) any change of his home address;
or

- (c) his having resided or stayed for a period of fourteen days at any premises in the address of which has not been notified to the police under this section,

notify that name, the effect of that change or, as the case may be, the address of those premises, to the police.

(3) For the purpose of determining any period for the purposes of this subsection, there shall be disregarded any time when the person in question—

- (a) is remanded in or committed to custody by an order of a court;
- (b) is serving a sentence of imprisonment;
- (c) is detained in a hospital; or
- (d) is outside Trinidad and Tobago.

Method of
notification

34c. (1) A person may give a notification requirement—

- (a) by attending at any police station in his local police area and giving an oral notification to any police officer; or to any person authorised for the purpose by the officer in charge of the station; or
- (b) by sending a written notification to any such police station.

(2) Any notification under this section shall be recorded in a register provided for that purpose and shall be acknowledged; such acknowledgement shall be in writing and in such form as the Minister, to whom responsibility for national security is assigned, may prescribe.

(3) In this section—

“home address”, in relation to any person, means the address of his home, that is to say, his sole or main residence in Trinidad and Tobago, or where he has no such residence, premises in Trinidad and Tobago which he regularly visits;

“local police area”, in relation to any person, means the police area in which his home is situated.

Offences 34D. (1) If a person—

- (a) fails without reasonable excuse, to comply with section 34B(1) or (2); or
- (b) notifies to the police, in purported compliance with section 34B(1) or (2), any information which he knows to be false,

he shall be liable on summary conviction to a fine of five thousand dollars or to imprisonment for one year or both.

(2) A person commits an offence under subsection (1)(a) on the day on which he first fails, without reasonable excuse, to comply with section 34B(1) or (2), and continues to commit it throughout any period during which the failure continues; but a person shall not be prosecuted under that provision more than once in respect of the same failure.

(3) Proceedings for an offence under this section may be commenced in any court having jurisdiction in any place where the person charged with the offence resides or is found.

Mandatory
medical
examination
of accused

34E. (1) Where a person is convicted of an offence under the sections to which this section applies, the Court shall require that the person be medically examined.

(2) Where upon such examination it is found that the person examined is suffering from the Human Immune Deficiency Virus (hereinafter referred to as “HIV”) or any other communicable disease, information to that effect shall be given promptly to the virtual complainant and the person examined.

(3) Subject to subsection (2), the information shall be confidential.

(4) Where it is found upon examination that the complainant has contracted HIV or any other communicable disease the court, upon application by the complainant and upon being satisfied on a balance of probabilities that the complainant contracted the disease as a result of the offence, may order the defendant to pay to the complainant compensation in addition to any amount ordered under section 3(5).

(5) This section applies to sections 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13.

Passed in the Senate this 7th day of December, 1999.

D. DOLLY

Acting Clerk of the Senate

Passed in the House of Representatives this 4th day of May, 2000.

J. SAMPSON-JACENT

Clerk of the House

House of Representatives amendments agreed to by the Senate this 6th day of June, 2000.

D. DOLLY

Acting Clerk of the Senate

Senate amendments agreed to by the House of Representatives this 9th day of June, 2000.

J. SAMPSON-JACENT

Clerk of the House