

2024-07-25

OBJECTS AND REASONS

This Bill would amend the *Sexual Offences Act*, Cap. 154 in order to create new sexual offences.

Arrangement of Sections

1. Short title
2. Amendment of section 2 of Cap. 154
3. Repeal and replacement of section 3 of Cap. 154
4. Repeal of section 4 of Cap. 154
5. Repeal of section 5 of Cap. 154
6. Insertion of sections 5A, 5B and 5C into Cap. 154
7. Amendment of section 6 of Cap. 154
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9. Repeal and replacement of section 8 of Cap. 154
10. Repeal of section 9 of Cap. 154
11. Insertion of sections 9A, 9B, 9C, 9D and 9E into Cap. 154
12. Amendment of section 11 of Cap. 154
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15. Amendment of section 14 of Cap. 154

- 16.** Amendment of section 15 of Cap. 154
- 17.** Amendment of section 16 of Cap. 154
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BARBADOS

A Bill entitled

An Act to amend the *Sexual Offences Act*, Cap. 154 in order to create new sexual offences.

ENACTED by the Parliament of Barbados as follows:

Short title

1. This Act may be cited as the *Sexual Offences (Amendment) Act, 2024*.

Amendment of section 2 of Cap. 154

2. *Section 2 of the Sexual Offences Act, Cap. 154, in this Act referred to as the principal Act, is amended by inserting, in alphabetical order, the following definition:*

“ “minor” means a person who is under the age of 16 years;”.

Repeal and replacement of section 3 of Cap. 154

3. *Section 3 of the principal Act is deleted and the following is substituted:*

“Rape

3.(1) Any person who has sexual intercourse with another person without the consent of the other person and who knows that the other person does not consent to the intercourse or is reckless as to whether the other person consents to the intercourse is guilty of the offence of rape and is liable on conviction on indictment to imprisonment for life.

(2) For the purposes of subsection (1), no consent is obtained where the complainant submits or does not resist by reason of

- (a) the application of force to the complainant or to a person other than the complainant;
- (b) threats or fear of the application of force to the complainant or to a person other than the complainant;
- (c) the personation of the spouse of the complainant;

- (d) false and fraudulent representations as to the nature of the act;
 - (e) the use of the accused's position of authority over the complainant;
 - (f) intimidation of any kind; or
 - (g) mental disorder or physical disability the complainant is unable to do one or more of the following:
 - (i) to understand the nature of the act; or
 - (ii) to decide
 - (A) whether the act should take place; or
 - (B) whether to engage in the act; or
 - (iii) to communicate the decision.
- (3) Notwithstanding section 21, a minor is deemed incapable of committing the offence of rape.
- (4) For the purposes of this Act, a minor is deemed incapable of consenting to sexual intercourse.
- (5) A spouse commits the offence of rape where a spouse has sexual intercourse with the other spouse without that spouse's consent by force or fear, where the spouse knows that the other spouse does not consent to the intercourse or is reckless as to whether the other spouse consents to the intercourse.
- (6) A spouse who commits the offence of rape is liable on conviction on indictment to imprisonment for life.
- (7) For the purposes of this section, "rape" includes the introduction, to any extent, in circumstances where the introduction of the penis of a person into the vagina of another person would be rape,
- (a) of the penis or any other part of a person's body into the anus or mouth of another person; or

- (b) of an object, not being part of the human body, manipulated by a person into the vagina or anus of another.”.

Repeal of section 4 of Cap. 154

- 4. *Section 4 of the principal Act is repealed.*

Repeal of section 5 of Cap. 154

- 5. *Section 5 of the principal Act is repealed.*

Insertion of sections 5A, 5B and 5C into Cap. 154

- 6. *The principal Act is amended by inserting the following new sections as sections 5A, 5B and 5C:*

“Sexual intercourse with a minor

5A.(1) Where a person has sexual intercourse with a minor, with the purported consent of that minor and that minor is under the age of 16, that person is guilty of an offence and is liable on conviction on indictment to imprisonment for life.

(2) It is a defence for a person charged with an offence under subsection (1) if the person proves that the person

- (a) reasonably believed that the minor was 16 years of age or over and had reasonable cause for that belief; and
- (b) is not over the age of 24 years and has not been previously charged with the same or a similar offence.

Sexual touching of a minor

5B.(1) A person commits an offence if the person, for a sexual purpose,

- (a) touches, directly or indirectly, any part of the body of a minor, with a part of the person's body or with an object; or
- (b) invites, counsels or incites a minor to touch, directly or indirectly, the body of
 - (i) any person, including the body of the first mentioned person; or
 - (ii) the body of the minor

with a part of the body of the minor or with an object.

(2) For the purposes of this section, touch is done for a sexual purpose if a reasonable person would consider that

- (a) whatever the circumstances or any person's purpose for the touch, it is because the touch is of a sexual nature; or
- (b) because of its nature and because of the circumstances or the purpose of any person in relation to it, the touch is sexual.

(3) A person who commits an offence under this section is liable on conviction on indictment to imprisonment for a term of 10 years.

Meeting a minor after sexual grooming

5C.(1) A person commits an offence where

- (a) having met or communicated with a minor on one earlier occasion or more
 - (i) intentionally meets the minor; or

- (ii) travels with the intention of meeting the minor whether in Barbados or elsewhere; and
- (b) at the time of the meeting or travel the person
 - (i) intends to do anything to or in respect of the minor, whether in Barbados or elsewhere, which if done in Barbados would be a sexual offence under this Act; and
 - (ii) does not have reason to believe that the minor is over the age of 16 years.
- (2) A person who commits an offence under this section is liable on conviction on indictment to imprisonment for a term of 20 years.”.

Amendment of section 6 of Cap. 154

7. *Section 6 of the principal Act is amended by deleting subsection (3) and substituting the following:*

- “(3) A person who commits the offence of incest is liable on conviction on indictment to imprisonment
- (a) if committed by an adult with a minor, for life;
 - (b) if committed by an adult with a person 16 years of age or over but under 18 years of age, for 20 years; and
 - (c) if committed between persons 16 years of age or over but under 18 years of age, for 2 years.”.

Repeal and replacement of section 7 of Cap. 154

8. *Section 7 of the principal Act is deleted and the following is substituted:*

“Sexual intercourse with step-child etc

7.(1) A person who has sexual intercourse with another person who is under the age of 18 years and is the first mentioned person’s adopted child, step-child, foster child, ward or dependant in the person’s custody is guilty of an offence.

(2) A person guilty of an offence under this section is liable on conviction on indictment to imprisonment for life.

(3) A person shall not be guilty of an offence under this section if the other person is the spouse of the first mentioned person.”.

Repeal and replacement of section 8 of Cap. 154

9. *Section 8 of the principal Act is deleted and the following is substituted:*

“Violation of person suffering from mental disorder or physical disability

8.(1) A person is guilty of an offence if the person penetrates the anus or vagina of another person, whether with a penis or any other part of the person’s body or with any object whatsoever, or performs any other sexual act with the other person, if the other person is suffering from a mental disorder or physical disability, knowing that the other person is suffering from the disorder or disability and that the other person does not consent or is incapable of consenting to the act.

(2) A person who is suffering from a mental disorder or physical disability shall be regarded as being incapable of consenting to engage in any act where by reason of mental disorder or physical disability, the person is unable to do one or more of the following:

(a) to understand the nature of the act;

- (b) to decide
 - (i) whether to engage in the act; or
 - (ii) whether the act should take place; or
 - (c) to communicate the person's decision.
- (3) A person guilty of an offence under this section is liable on conviction on indictment to imprisonment for life. ”.

Repeal of section 9 of Cap. 154

10.*Section 9 of the principal Act is repealed.*

Insertion of sections 9A, 9B, 9C, 9D and 9E into Cap. 154

11.*The principal Act is amended by inserting the following new sections immediately after section 9A:*

“Causing or inciting a minor to engage in sexual activity

9A.(1) A person who intentionally causes or incites a minor to engage in sexual activity is guilty of an offence unless the person has reason to believe that the minor is over the age of 16 years.

(2) A person guilty of an offence under this section is liable on conviction on indictment to imprisonment for life if the activity caused or incited involved

- (a) penetration of a minor's anus, vagina or mouth with a penis, or any other part of a person's body or with any object whatsoever; or
- (b) penetration of the person's anus, vagina or mouth with a penis, or any part of a minor's body or any with object whatsoever.

(3) If the activity does not involve activity mentioned in subsection (2), a person guilty of an offence under this section is liable on

- (a) summary conviction to a fine of \$10 000 or to imprisonment for a term of 2 years or to both; or
- (b) conviction on indictment to imprisonment for a term of 15 years.

Engaging in sexual activity in the presence of a minor

9B.(1) A person is guilty of an offence if the person intentionally engages in sexual activity for the purpose of sexual gratification

- (a) in the presence of a minor or the minor is in a place from which the minor can observe the person;
 - (b) knowing or believing
 - (i) that the minor is aware of the sexual activity; or
 - (ii) intending that the minor should be aware that the person is engaging in the sexual activity.
- (2) A person guilty of an offence under this section is liable
- (a) on summary conviction, to a fine of \$10 000 or imprisonment for a term of 2 years or to both; or
 - (b) on conviction on indictment to imprisonment for a term of 10 years.

Causing a minor to watch a sexual act

9C.(1) A person is guilty of an offence if, for the purpose of obtaining sexual gratification, the person intentionally causes a minor

- (a) to watch a third person engaging in sexual activity; and

(b) to look at an image, photograph, or video, including animation, of any person engaging in sexual activity.

(2) A person guilty of an offence under this section is liable on summary conviction to a fine of \$100 000 or to imprisonment for a term of 2 years or to both.

Sexual communication with a minor

9D.(1) A person commits an offence and is liable on conviction on indictment to imprisonment for 10 years if, for the purpose of obtaining sexual gratification

- (a) the person intentionally communicates with a minor;
- (b) the communication
 - (i) is sexual; or
 - (ii) is intended to encourage the minor to make to the person or another person a communication which is sexual; and
- (c) the first mentioned person does not have reason to believe that the minor is 16 years of age or over.

Taking indecent photographs of a minor

9E. A person commits an offence and is liable on conviction on indictment to imprisonment for 10 years if the person

- (a) takes or permits to be taken any indecent photograph of a minor;
- (b) distributes or shows an indecent photograph of a minor;
- (c) has in the person's possession indecent photographs of a minor, whether or not with a view to the photographs being distributed or shown by that person or others; or

- (d) publishes or consents to the publication of any advertisement likely to be understood as conveying that the advertiser distributes or shows indecent photographs of a minor or intends to do so.”.

Amendment of section 11 of Cap. 154

12. *Section 11 of the principal Act is amended by deleting subsection (1) and substituting the following:*

“(1) A person who indecently assaults another is guilty of an offence and is liable

- (a) on summary conviction to imprisonment for 5 years; or
- (b) on conviction on indictment to imprisonment for 10 years.”.

Repeal of section 12 of Cap. 154

13. *Section 12 of the principal Act is repealed.*

Amendment of section 13 of Cap. 154

14. *Section 13 of the principal Act is amended by deleting the words “15 years” and substituting the word “life”.*

Amendment of section 14 of Cap. 154

15. *Section 14 of the principal Act is amended by deleting the words “15 years” and substituting the word “life”.*

Amendment of section 15 of Cap. 154

16. *Section 15(1) of the principal Act is amended by deleting the words “15 years” and substituting the words “25 years”.*

Amendment of section 16 of Cap. 154

17. *Section 16 of the principal Act is amended by deleting the word “10 years” and substituting the word “life”.*

Amendment of section 17 of Cap. 15

18. *Section 17 of the principal Act is amended by deleting subsection (1) and the following is substituted:*

“(1) A person who

(a) being the owner, occupier or manager of premises; or

(b) having control of premises or assisting in the management and control of premises,

induces or knowingly suffers a minor to resort to or to be in or upon the premises for the purpose of engaging in sexual activity with another person is guilty of an offence and is liable on conviction on indictment to imprisonment for life.”.

Repeal and replacement of section 28 into Cap. 154

19. *Section 28 of the principal Act is deleted and the following is substituted:*

“Corroboration

28. Subject to section 31, where an accused is charged with an offence under this Act, no corroboration is required.”.

Repeal and replacement of section 30 of Cap. 154

20. *Section 30 of the principal Act is deleted and the following is substituted:*

“Hearing *in camera*

30. On a trial of an accused for an offence under this Act, the court shall hear the evidence of the complainant *in camera*.”.

Repeal of section 37 of Cap. 154

21. *Section 37 of the principal Act is repealed.*

Transitional

22. *Nothing contained in this Act applies to any offence committed before the commencement of this Act.*

Commencement

23. *This Act shall come into operation on a date to be fixed by Proclamation.*

Read three times and passed the House of Assembly this
day of _____, 2024.

Speaker

Read three times and passed the Senate this _____ day of
_____, 2024.

President